



The State of
Montana

Impaired Driving Assessment

Strategic Planning &
Program Management

Prevention

Criminal Justice System

Alcohol & Other Drug Misuse

May 22-27, 2005

STATE OF MONTANA

IMPAIRED DRIVING ASSESSMENT

May 22 – 27, 2005

National Highway Traffic
Safety Administration
Technical Assistance Team

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Evelyn Avant, Impaired Driving Division, National Highway Traffic Safety Administration (NHTSA) facilitated the assessment process. Robert Weltzer, Rocky Mountain Region, assisted in the facilitation process. The Team would like to thank them for helping to give a national perspective to the assessment process. The Team wishes to commend Belinda Goodwin, Administrative Consultant to the Team, for her invaluable work in managing the production of a final report in a period of 48 hours.

The Team thanks each of the participants in the review for the time and energy invested in preparing and delivering their presentations. Their candor and thoroughness in discussing their activities to target impaired driving in Montana greatly assisted the Team in conducting a complete review.

The Team believes this report will contribute to the State's efforts to enhance the effectiveness of its impaired driving program in preventing injuries, saving lives, and reducing economic costs of motor vehicle crashes on Montana's roadways.

Although the Team realizes that the assessment is a critique of all impaired driving activities, the Team wishes to commend and encourage all who are involved in the day-to-day functions of reducing impaired driving in Montana.

INTRODUCTION

In 2003, 42,643 persons were killed and nearly 2.8 million injured in police-reported motor vehicle crashes in the United States. Motor vehicle injuries are the leading cause of death for individuals from age 5 through 27. The economic cost of motor vehicle crashes exceeds \$150 billion annually. Alcohol was involved in approximately 40 percent (17,013) of the total number of traffic fatalities and responsible for nearly 290,000 injuries in 2003.

The mission of the National Highway Traffic Safety Administration (NHTSA) is to reduce deaths, injuries and economic and property losses resulting from motor vehicle crashes. In its ongoing pursuit to reduce alcohol-related traffic crashes and subsequent fatalities and injuries, NHTSA continues its program of providing Technical Assistance Teams to the States upon request. This approach allows the States to use highway safety funds to support the Team's evaluation of existing and proposed alcohol - and other drug - impaired driving control efforts.

NHTSA acts as a facilitator by assembling a team composed of individuals who have demonstrated competence in impaired driving program development and evaluation. Program expertise among team members includes adjudication, enforcement, evaluation, prevention, program management, prosecution, traffic records, and substance abuse treatment/rehabilitation.

The Montana Department of Transportation, through its State Highway Traffic Safety Office (SHTSO), requested NHTSA's assistance in assessing the State's alcohol and drug impaired driving countermeasures program. NHTSA met with the State Highway Traffic Safety Officer to define key issues of concern to the State, and to plan the assessment process. State representatives expressed a particular interest in addressing Native American populations in the State.

The Montana Impaired Driving Assessment was conducted at the Wingate Inn in Helena, Montana from May 22 – 27, 2005. Under the leadership of Priscilla Sinclair, State Highway Traffic Safety Officer, and Audrey Allums, Program Manager, numerous state and local program experts (see Agenda) delivered briefings and answered questions from the Technical Assistance Team on a wide range of impaired driving issues and programs over a four-day period.

This Impaired Driving Assessment Report provides the findings and recommendations of the Technical Assistance Team to the State of Montana. This report does not attempt to address or resolve any of the unique jurisdictional issues concerning Native American populations in Montana. That would require a separate study and report prepared in close consultation with all of the tribal governments. The report contains limited information obtained from selected representatives that participated in the assessment proceedings.

Montana Demographics and History

Montana's name is derived from the Spanish word *montaña*, meaning mountain country. Located in the North Western United States, with a land area of 145,552 square miles, Montana is the fourth largest state in the United States (after Alaska, Texas and California). Montana has a low population density with much of the State being rural. As of 2004, the population of Montana was 926,865. The racial makeup of the State is as follows:

- 90.6 percent White, non-Hispanic
- 6.2 percent American Indian/Alaskan native
- 2.0 percent Hispanic, of any race
- 1.7 percent Mixed race
- 0.3 percent Black
- 0.5 percent Asian

Montana and Canada share a 545-mile northern border. The State borders the Canadian provinces of British Columbia, Alberta and Saskatchewan. To the east is the border with North Dakota, to the southeast is a short border with South Dakota. The Wyoming border is to the south, and on the west and southwest is the Idaho border, marked by the Bitterroot River. Major rivers in the State include the Missouri, Clark Fork of the Columbia, Milk, Flathead and Yellowstone. Montana is also one of many areas to claim the disputed title of "world's shortest river" (the Roe River).

Montana contains Glacier National Park and portions of Yellowstone National Park. Other sites include the Little Bighorn National Monument Big Horn Canyon National Recreational Area, Big Hole National Battlefield, and the National Bison Range. There are also a number of national forests and National Wildlife Refuges. The Federal government administers 36,000,000 acres. There are 275,000 acres administered as state parks and forests.

In and around Montana's mountainous western region are the large mineral deposits for which the State is famous—copper, silver, gold, platinum, zinc, lead and manganese. The eastern part of the State is noted for its petroleum and natural gas, and there are also vast sub-bituminous coal deposits, worked largely at the most extensive U.S. open-pit mines. Montana also mines vermiculite, chromite, tungsten, molybdenum, and palladium. Leading industries manufacture forest products, processed foods, and refined petroleum.

In Eastern Montana the high grass of the Great Plains once nourished herds of buffalo and later sustained the cattle and sheep of huge ranches; much of the high grass is now gone, but the cattle and sheep remain. Periodic drought and severe weather have turned some farming communities into ghost towns, but agriculture, with the aid of irrigation, still provides the largest share of Montana's income. Montana ranks high among the States in wheat and barley, with rye, oats, flaxseed, sugar beets, and potatoes as other important crops. Sheep and cattle raising make significant contributions to the economy.

Although the State is generally regarded as Republican, Montana has a Democratic Governor, Democratic-controlled legislature, and one Democratic U.S. Senator.

The creation of Montana as a state was largely dependent upon the federal government's 19th century treaty negotiations with the American Indian Nations (AINs) who were the first occupants of the lands now encompassed within Montana. Through these treaties, the federal government created reservations for the AINs, which were set apart for the exclusive use and occupancy of the Indian tribes and their members under a federal trust status. Nine percent of all land in Montana is currently designated as reservation land.

Montana is home to the 11 Indian tribes that occupy seven reservations: Blackfeet; Crow; Flathead (Confederated Salish and Kootenai Tribes); Ft. Belknap (Assiniboine and Gros Ventre);

Ft. Peck (Assiniboine and Sioux); Northern Cheyenne; and Rocky Boy (Chippewa/Cree). These federally-recognized Indian tribes possess a trust relationship with the United States government and enjoy the status of separate political sovereigns under the protection of the United States.

The State has formally recognized the presence of the American Indian Nations through Article X of the State Constitution, which acknowledges the importance of Native American heritage to the State of Montana, and in particular, recognizes the responsibility of Montana’s state educational system to educate all Montana citizens about the Native American presence in Montana. In keeping with this provision, this report speaks of the American Indian Nations in Montana as “Native Americans.” The term “Native Americans” is inclusive of all AINs in Montana. However, the term Native American may be used interchangeably. Each federally recognized tribe in Montana enjoys a distinctive political and cultural status.

Most Native Americans in Montana today are simultaneously citizens of the State and of their own tribal governments. In some cases, Native Americans are not eligible for enrollment in their tribe due to blood quantum or residency requirements. In these cases, the individuals are state citizens and are not tribal citizens, although if they have significant ties to the reservation community they might be treated as “Indians” for purposes of some federal laws. Jurisdiction is a complicated matter on most reservations and is largely dependent upon the particular laws and customs of the tribal community, as well as the factual circumstances at issue.

Problem Identification

Montana has the highest alcohol fatality rate in the nation per vehicle miles traveled (See chart below). During 2003, alcohol-related fatalities were approximately 49 percent of all fatalities and alcohol-related crashes were 9.4 percent of all crashes in the State.

American Indian fatalities tend to make up a high percentage of alcohol-related fatalities in some of the Rocky Mountain States. During 2004, over 30 percent of the alcohol-related fatalities in Montana were Native American. Of the 45 total fatalities, 29 occurred on a reservation while 16 were off reservation lands.

	Fatalities in Alcohol-Related Crashes, 2003			Passenger Vehicle Occupant Restraint Use Rates, 2003	
	Percentage > 0.01 BAC	Percentage > 0.08 BAC	Rate per 100 million VMT	Fatally Injured Occupants (Known Use Only)	Observed Use
Montana	49%	41%	1.18	30.9%	80%
US Total	40%	34%	0.59	43.2%	79%
Best State	15%	12%	0.19	63.2%	95%

PRIORITY RECOMMENDATIONS

Priority recommendations are “bolded” in individual sections.

1-A: State Local and Tribal DWI Task Forces/Commissions

- ◆ Establish a Governor’s Impaired Driving Task Force to include tribal representation with high level visible leadership

1-B: Strategic Planning

- ◆ Enact a state policy requiring consistent and timely reporting of all crashes to a single state agency.

1-C: Program Management

- ◆ Hire or contract for a full-time law enforcement liaison to coordinate and manage law enforcement projects and activities that will enhance the State’s presence among the law enforcement communities.
- ◆ Hire or contract a full-time Native American tribal liaison to assist the State Highway Traffic Safety Office to provide program management support, to establish positive relationships with all Montana tribes, and to support and assist the Governor’s Office of Indian Affairs.

1-D: Data and Records

- ◆ Work with tribal governments toward incorporation of Native American reservation data into the statewide database. Include summary data on all crashes, DUI citations, convictions and sentences.
- ◆ Include Native American representation in the current strategic planning process for state and tribal records, and on the State’s Traffic Records Coordinating Committee.

1-E: Evaluation

- ◆ Develop, fund, and implement a comprehensive evaluation plan to include process and impact evaluation for the impaired driving program.

2-B: Transportation Alternatives

- ◆ Ensure that designated driver and safe ride programs are age-appropriate, include health risk information, and discourage over-consumption.

2-D-1: Schools

- ◆ Coordinate impaired driving and traffic safety prevention activities with science-based substance abuse prevention strategies at the state and local level.

3-A: Impaired Driving Laws

- ◆ Enact felony statutes with mandatory imprisonment penalties that criminalize DUI Manslaughter and Vehicular Homicide when a death occurs incident to the operation of a motor vehicle by a person with a blood alcohol level of .08 or higher or when such person's ability to operate a motor vehicle is diminished due to drugs or alcohol in the body.
- ◆ Enact statutory provisions providing for a one-year suspension for refusing to submit to a chemical test with no provision for a temporary or probationary license for 30 days for a first refusal.
- ◆ Enact statutory provisions providing for a criminal penalty of up to six months incarceration in addition to a three-year license suspension for a third time refusal to submit to a chemical test, within any time period, with no provision for a temporary or probationary license.
- ◆ Elevate to felony status, and impose mandatory incarceration for the offense of operating a motor vehicle after suspension or revocation of driving privileges following a third Per Se or DUI conviction or following a conviction for a Per Se or DUI offense which resulted in death, or severe bodily injury or great bodily harm to another.
- ◆ Enact a primary seatbelt law.

3-B: Enforcement

- ◆ Provide SFST refresher and recertification training.
- ◆ Conduct sobriety checkpoints.

3-C: Publicity to Enhance General Deterrence

- ◆ Develop and implement a year-round media plan to enhance general deterrence.

3-D: Prosecution

- ◆ Encourage all tribal courts to adopt uniform traffic safety codes that incorporate provisions of the Montana statutes governing DUI, Per Se violations, and the suspension of driving privileges upon conviction or for refusal to comply with the Montana implied consent law.

- ◆ Require, through statute or rule of court procedure, that a prosecutor shall be present at all proceedings in which pleas of guilty or no contest are entered to DUI or Per Se violations and that such prosecutor provide information to the court concerning defendant's conviction record prior to imposition of sentence.

3-E: Adjudication

- ◆ Encourage all tribal courts and their judges to report all traffic convictions and case dispositions to Driver Control.
- ◆ Require judges to decline to accept plea negotiations that include prosecutorial commitments to effect the disposition of implied consent refusal proceedings in favor of a defendant.

3-F-1: Administrative License Revocation and Vehicle Sanction

- ◆ Adopt and implement a comprehensive ALR program.

3-F-3: Information and Records System

- ◆ Coordinate plans for upgrading the driver license system with those components of a comprehensive statewide traffic records system," as included in the previous "Traffic Records Assessment.

4-B: Treatment and Rehabilitation

- ◆ Evaluate the current ACT screening procedure and instruments and revise or replace as indicated.
- ◆ Develop screening, referral and treatment procedures for Native Americans that address cultural differences and access to services.

4-C: *Monitoring Impaired Driving*

- ◆ Develop an Impaired Driver Tracking System including data on all DUI offenders' actions in the criminal justice, driver licensing and treatment systems.

I. STRATEGIC PLANNING AND PROGRAM MANAGEMENT

Effective programs begin with strong leadership, strategic planning, and program management. Efforts should be data driven, focusing on populations, and geographic areas that are most at risk, and science-based, determined through independent evaluation to be likely to achieve success. Programs and activities should be guided by problem identification and carefully managed and monitored for effectiveness. Adequate resources should be devoted to the problem, and costs should be borne, to the extent possible, by impaired drivers.

1-A: State, Local, and Tribal DWI Task Forces/Commissions

Advisory

States, local subdivisions, and tribal governments should convene Driving While Impaired (DWI) task forces or commissions to foster leadership, commitment, and coordination among all parties interested in impaired driving issues. Task forces and commissions should:

- *Enjoy active support and participation from the highest levels of leadership.*
- *Include members that represent all interested parties, both traditional and non-traditional, such as representatives of government – highway safety, enforcement, criminal justice, public health, driver licensing, and education; business – employers and unions; the military; medical, health care, and treatment; multi-cultural, faith-based, advocacy, and other community groups.*
- *Recommend goals and objectives, provide policy guidance, and identify available resources, based on a wide variety of interests and through leveraging opportunities.*
- *Coordinate programs and activities to ensure that they complement rather than compete with each other.*
- *Operate continuously, based on clear authority and direction established by law.*

Status

There are 16 Safe Kids/Safe Communities (SKSC) local coalitions that coordinate and conduct occupant protection and impaired driving programs at the local level, as well as 16 counties with DUI task forces in the State. There are 14 counties covered by both SKSC and DUI task forces. A total of 16 counties are covered by SKSC coalitions only. Three counties are covered by a DUI task force. At least two reservations, Ft. Peck and the Crow Reservation, also have a DUI task force. Funding for tribal DUI task forces comes from the Indian Health Service's Injury Prevention Fund. On one reservation, which encompasses some two million acres, the annual allocation is less than \$2,000. Local DUI Task Forces receive half of the license reinstatement fees paid for DUI convictions in their counties. These currently range from approximately \$3,000 in small counties up to \$30,000 in the largest county. There is interest and some discussion in reinstating a state-level task force; this has not yet occurred.

The State Highway Traffic Safety Office (SHTSO) provides funding to Healthy Mothers/Healthy Babies (HMHB), a 501-c-3 organization, which serves as the funding and coordinating organization for the local coalitions. HMHB operates with a staff of four. Under the grant with the SHTSO, it provides the following critical functions in support of the coalitions:

1. Co-chairs the state advisory committee;
2. Monitoring, distribution of pass-through funds;
3. Distribution of materials;
4. Maintenance of a website; and
5. Conducting of quarterly meetings with the coalitions.

A coalition can receive either \$15,000 or \$25,000, dependent on the size of the community. To receive these funds, the coalition must agree to complete at least one alcohol server training if a \$15,000 recipient or at least two alcohol server trainings if a \$25,000 recipient, utilize crash data in its efforts to educate the public, participate in national mobilizations, conduct a “saved by the belt award” program, and conduct public information and education. Other uses of these funds are largely at the discretion of the coalition as submitted in a plan approved by the SHTSO. Other uses may include subsequent enforcement grants to local or state law enforcement agencies.

Conducting the TIPS server training, as made available by the Department of Revenue, is a significant component of the SKSC community coalitions’ efforts. Hundreds of servers from several hundred restaurants and taverns have been trained through this program. Convenience store staff has also been included in this training; however, the training is not sufficiently targeted for this audience and the material needs to be more specifically adapted for this group. The coalitions conduct education programs for students which include, for example, replication of impairment with use of “Fatal Vision” goggles and replication of DUI crashes complete with EMS and fire, triage, and the simulated “deaths” of select students. The coalitions may also be instrumental in helping to conduct Project Graduations and other events in the community, particularly at high risk times such as Halloween and New Years, as identified by the crash data. The coalitions will provide safe-ride-home programs through various means such as a coupon system through bars and restaurants or working directly with cab companies.

One of the more important activities of the coalitions is bringing various parties together to focus and coordinate efforts and acquire and share resources. In this way, the coalitions significantly leverage local resources – funds, materials, and volunteer time – in order to implement projects. Community donations, which may include free rides home provided by a beverage wholesaler or free car key tags, are much needed additions to the overall coalitions’ programs.

The coalitions are comprised of many diverse groups which include enforcement, education, and prevention specialists. With one exception, the Salish and Kootenai of the Flathead reservation, the tribes are not generally represented on these coalitions although the coalitions cover parts of four reservations.

Two instances were cited where tribal governments attempted to form their own coalitions under the auspices of SKSC. Both efforts were reported as discontinued due to management issues and controversy over the limitations attached to the funding that was provided. The possibility was expressed that tribal communities may have a commitment to autonomy that is in conflict with the program, and Bureau of Indian Affairs (BIA) funding might be more appropriate. Concern was also expressed by more than one presenter regarding the ability to require Native communities to be “accountable” for funding or to meet other programmatic requirements.

At the time of this assessment, the coalitions cover approximately 80 percent of the population of the State but are largely absent in the most rural parts of Montana.

When the State dedicated \$50 of each DUI-related driver license reinstatement fee to the support of DUI task forces, the number of these task forces rose to about 30. Unfortunately, this dedicated funding was ended by the legislature, resulting in the dissolution of almost half of the task forces. The good news in this regard is that this dedicated fee was reinstated and doubled, such that \$100 of each \$200 driver license reinstatement fee is dedicated to local county DUI task forces, with the funds administered by the SHTSO. The coordination of these efforts has major implications for any projects, allowing greater use of available resources. As one individual noted, what one agency can't do another can and what one source of funding can't provide, another can.

Considering that many of the DUI task forces operate in conjunction with the SKSC coalitions, DUI task forces can be credited with implementing the same types of projects as the coalitions. The task forces address all components of a comprehensive impaired driving system, but not at the same time and to the same degree. This creates imbalances in the system as a whole. These imbalances reduce the effectiveness of the projects and activities. For example, increases in enforcement lead to increased backlogs in the judicial system. Jails, which are already inadequate, cannot hold DUI suspects.

The reservation DUI task forces engage in several activities to combat impaired driving, including saturation patrols and safety mobilizations. Tribal law enforcement officers support tougher laws but express frustration over significant internal barriers to tougher laws or increased penalties. A reservation task force encounters problems similar to, but often greater than, off-reservation task forces. There is a significant amount of "cite and release" whereby a DUI suspect is cited but not jailed. One of the reasons for this is the severely limited jail space on the reservation. Penalties among the tribes for impaired driving are small and often considered a joke; the unemployment and poverty levels are so high that most residents of the reservation cannot pay any significant fine. Plus, the extreme variation of traffic codes among the different tribes makes coordination among the reservations or between a reservation and the State and adjacent communities especially difficult.

Recommendations

- ◆ **Establish a Governor's Impaired Driving Task Force to include tribal representation with high level visible leadership.**
- ◆ Expand the number of and/or reach of the DUI task forces and community coalitions so that all parts of the State, including the reservations, are covered by a task force and/or coalition.
- ◆ Direct DUI task forces to address impaired driving systematically. Consider how impacting one part of the system (e.g., increasing enforcement) will subsequently impact other parts of the system (e.g., overload the judicial system).

1-B: Strategic Planning

Advisory

States should develop and implement an overall plan for short- and long-term impaired driving activities. The plan should:

- *Be based on careful problem identification that uses crash, arrest, conviction, driver record, and other available data to identify populations and geographic areas most at risk.*
- *Allocate resources for countermeasures determined to be effective that will impact populations and geographic areas most at risk.*
- *Include short-term objectives and long-range goals.*

Status

Montana's State Highway Traffic Safety Office (SHTSO) is located within the Department of Transportation (MDT) with the Traffic Safety Officer reporting directly to the MDT Executive Director. MDT's Executive Director is appointed by the Governor and also serves as the Governor's Highway Safety Representative (GR). The GR advocates for a strong traffic safety program and recognizes the need to get the traffic safety message out to the communities and local officials.

Although a large state geographically, the traffic safety program is centralized in the headquarters of MDT. While this allows the office to focus funding resources where most needed, it may not provide as much local contact, networking and interaction as some decentralization might allow. The SHTSO is composed of eight employees, four serving as supervisors with three employees supervising one employee apiece. This is apparently an increase of two employees since the office was reduced to six employees upon being transferred to MDT from the Department of Justice. In addition to program and grant management, the office is also responsible for collection and analysis of the Fatal Analysis Reporting System (FARS) data.

Some significant changes have been made in state program planning since the previous Impaired Driving Assessment was conducted in October 22 – 26, 2001. Three of four recommendations from this assessment are partially or fully implemented. These include:

1. Basic county traffic safety profiles are posted on the internet;
2. City and town-level profiles are provided upon request; and
3. Beginning in 2002, the office has hosted an annual highway safety planning meeting to which various stakeholders are invited.

This meeting helps establish program direction for the following federal fiscal year. In addition, policies and procedures formalizing these planning meetings and for the grant application process has been developed.

Montana develops a "Combined Performance and Highway Safety Plan" which includes the following:

1. Required certifications and assurances;
2. Description of the planning processes;
3. Goals and objectives;
4. Task descriptions;
5. Cost summaries and evaluation;
6. Any special funding conditions; and
7. The highway safety program cost summary (HS Form 217).

In the FY '05 Plan, short term goals to be achieved by 2006 and longer term goals to be achieved by 2008 are identified for the highway safety priority areas that include alcohol and other drugs, occupant protection, police traffic services, traffic records, emergency medical services and motorcycle involvement in crashes. According to the FY '05 Plan, the SHTSO solicits projects from agencies as appropriate in specific problem areas. Participants listed as participating in this process include police and sheriffs, judicial agencies, and local/state programs.

A separate document, "Traffic Safety Problem Identification," is developed by the SHTSO which provides traffic crash and exposure statistics, crash demographics, and data related to traffic safety areas of concern. There are some significant impediments to providing complete and accurate crash statistics for a more thorough statewide overview of the impaired driving crash situation in Montana. One impediment, as noted in the previous impaired driving assessment, is the absence of a state requirement to report all crashes to a central state agency. Second, crash data for the reservations, with the exception of fatal crashes investigated by the Montana Highway Patrol, is almost non-existent and data which may exist are not shared on any consistent or routine basis with the State. And third, there is no central depository for DUI arrest and conviction data.

MDT is also initiating the development of a comprehensive safety plan, with the Executive Director/GR serving as the chair of a multi-entity committee to develop this plan. A Tribal Safety Conscious Planning Forum is planned for June 6-7, 2005, with the MDT director and highway safety staff providing important support and playing critical leadership roles in this forum. Other intra-agency planning coordination and cooperation is evident in working with the MDT engineers to help identify and address high-DUI locations through safety construction countermeasures.

Because Native Americans comprise 20 percent of the State's fatalities, it is a critical challenge to incorporate the seven reservations in Montana in the State's traffic safety planning and program implementation. Traffic safety funding for the tribes is administered by the Bureau of Indian Affairs (BIA) in Albuquerque, New Mexico, where BIA has a full-time traffic safety coordinator for all the tribes in the U.S. NHTSA liaison to the BIA is handled out of NHTSA's Ft. Worth, Texas, regional office. There are many barriers to assisting the tribes' efforts to reduce impaired driving. These include, but are not limited to, the quality of the state-tribal relationship which may be largely determined by issues other than traffic safety, such as water rights; the extreme diversity of the legal framework under which the tribes operate, such as differing traffic codes, lack of data and problem identification; and socio-economic factors such as extremely high unemployment and comparatively low education levels. Montana is in an unusual position in that a significant amount of its geographic area and a major

portion (approximately 20 percent) of the fatalities that occur within the boundaries of the State actually occur within the geo-political boundaries of sovereign nations – the Indian nations. Additionally, there is no mandate to submit crash data from any law enforcement agency, state tribal or non-tribal, to a single agency. Both situations significantly impair the State’s ability to conduct adequate problem identification and significantly limit enforcement agencies’ ability to evaluate their own performance against established goals, an average or norm. Analysis beyond relatively basic compilation of fatality and fatal crash data is impossible. However, in addition to county level data, the State can and should look at the relationship of other political entities, i.e., tribal reservations, in comparison to the State as a whole and to each other. A jurisdictional review of available data can better support existing countermeasures as well as support planning efforts to allocate projects and funding resources according to a bona fide ranking system. This is particularly important in those areas where the reservations constitute all or most of the county.

Recommendations

- ◆ Expand involvement of the tribal government and advocacy other interest groups in the development of performance goals and the highway safety plan.
- ◆ Continue to support and develop a state comprehensive safety plan which encompasses the goals, plans and programs of many entities and funding sources.
- ◆ **Enact a state policy requiring consistent and timely reporting of all crashes to a single state agency.**
- ◆ Establish a system by which DUI arrest and conviction data are collected statewide and analyzed as part of the State’s problem identification system.
- ◆ Conduct jurisdictional analysis of crash data to address the proportion of reservation land to counties and the State and the proportion of Indian fatal crashes to the rest of the State of Montana.
- ◆ Develop a ranking or priority system based on traffic safety data to focus program efforts and support Highway Safety Plan Countermeasures.

1-C: Program Management

Advisory

States should establish procedures to ensure program activities are implemented as intended. The procedures should provide for systematic monitoring and review of ongoing efforts to:

- *Designate a lead agency responsible for overall program management and operations.*
- *Ensure appropriate data are collected to assess program impact and evaluation.*
- *Measure progress in achieving established goals and objectives.*
- *Detect and correct problems quickly.*

Status

The Montana Department of Transportation (MDT) serves as the lead agency which is responsible for overall program management and operations of the highway safety program. The MDT director, newly appointed as of January 2005, serves as the Governor's Highway Safety Representative.

The State Highway Traffic Safety Office (SHTSO) reports directly to the MDT Director. This office administers the NHTSA grant funds, working directly with the NHTSA regional office in Denver, Colorado. MDT has five district offices located throughout the State, although the administration of the highway safety program funded by NHTSA is 100 percent centralized. MDT also administers and implements the Federal Highway Administration (FHWA) funded safety program which includes hazard elimination projects to reduce traffic crashes.

The low-density population of Montana is a significant factor in program management. The SHTSO contracts with both state and local entities to implement traffic safety projects. In at least one case, the grantee further passes through some of the grant funds and is responsible in the prime grant for oversight and monitoring of the sub-grants.

The SHTSO put in place a new monitoring process as of October 1, 2004. Training in project monitoring has been provided to all staff on how to conduct on and off site monitoring. Policies and procedures were updated and implemented on file management, reporting requirements, contractor payments, contract and sub-recipient monitoring, plus contract and closeout procedures which cover the specifics on project monitoring. Monitoring includes on-site visits, meetings, phone interviews, and reporting. Activity reports provided by the grantees describe the completion of activities to meet grant requirements and the accumulation of project-related data. The monitoring procedures include standard forms to be completed for both on-site and desk monitoring. These processes tend to be very paper- and time-intensive. Concurrent with this assessment, the SHTSO was also undergoing a review by the legislative auditor. Because of the timing of this audit, the auditor's report was not yet available for inclusion or reference in this report.

The SHTSO completed many of the program management recommendations from the previous assessment. Those recommendations that have been addressed include:

1. Providing training for sub-grantees on fiscal responsibility and performance accountability;
2. Updated procedures regarding contract management which are provided to each grantee;
3. Updating the project monitoring process as referenced above; and
4. Accessing additional program management services, in this case contracting an additional program manager from MTG Management consultants, specifically for a \$3 million mobile data project.

One issue raised by the previous assessment that did not result in a specific recommendation was the “timely submission of quarterly and final reports as required under contract.” At that time, it was noted that many sub-grantees did not provide final reports until 90 days after project completion. As this made it impossible for the SHTSO to meet its deadline for reporting to NHTSA, resolution to this problem was critical. The assessment noted that alternatives were being considered to ensure timely receipt of reports. Since that time, the SHTSO revised its deadline to require final reports within 30 days.

The SHTSO has made significant strides to enhance its program management abilities. However, the diversity of the State, extent of low-density population counties, extremely long distances to cover, large reservations and proportion of the Native American population, and increased emphasis at the upper most levels of state government on impaired driving issues call for even more resources to be dedicated to more parts of the State. Additionally, closer ties need to be developed with the tribes, law enforcement agencies, and community officials and leaders.

Law enforcement is considered one of the most critical components of a traffic safety program. Selective Traffic Enforcement Programs (STEPS) for impaired driving and occupant protection, law enforcement training, and police traffic service projects constitute the largest monetary commitments within the Montana HSP. Planned use of funds is described below.

FY ‘05 HSP Planned Law Enforcement-Related Projects

Program Area	Task Description	Amount Planned
Alcohol/Other Drugs	Travel, per diem, and training costs in support of alcohol and other drug programs. Includes funds for law enforcement officers	\$ 22,000
	Overtime impaired driving enforcement	\$ 250,000
	Training for judges, prosecutors, and law enforcement personnel	\$ 25,000
	Purchase of DUI equipment for police and sheriffs	\$ 100,000
Occupant Protection	Travel, per diem, and training costs in support of occupant protection programs. Includes funds for law enforcement officers	\$ 5,000
	Occupant protection overtime enforcement	\$ 250,000

Section 405	STEP	\$ 95,000
Section 157	STEP	\$ 173,000
Police Traffic Services	Travel, per diem, and training costs in support of police traffic services programs. Includes funds for law enforcement officers and an advisory group of law enforcement personnel	\$ 5,000
	Purchase of speed trailers for law enforcement agencies	\$ 75,000
	Law enforcement equipment	\$ 100,000
	STEP for impaired driving national mobilizations	\$ 100,000
	STEP for occupant protection national mobilizations	\$ 100,000
Section 154	DUI STEP	\$ 289,900
	Additional law enforcement DUI equipment	\$ 453,300
Section 164	Additional law enforcement DUI equipment	\$ 272,000
TOTAL		\$2,315,200

The MDT recently hired a Tribal Coordinator who reports directly to the MDT Director. However, there is no one on staff in SHTSO who has the expertise and cultural understanding to work with the Indian tribes. With 11 tribes on seven reservations that cover nine percent of the land in Montana, it will require a significant commitment to establish the needed positive relationships to market and coordinate safety projects. Current manpower is simply not sufficient to manage the extent and complexity of the programs and to address these needs.

Recommendations

- ◆ **Hire or contract for a full-time law enforcement liaison to coordinate and manage law enforcement projects and activities that will enhance the State's presence among the law enforcement communities.**
- ◆ **Hire or contract a full-time Native American tribal liaison to assist SHTSO to provide program management support, to establish positive relationships with all Montana tribes, and to support and assist the Governor's Office of Indian Affairs.**
- ◆ Continue to upgrade and update program management procedures.
- ◆ Continue to provide program and project management training to grantees and internal staff.
- ◆ Explore opportunities to work with the MDT districts in providing program support throughout the State.
- ◆ Streamline administrative procedures and make greater use of technology, such as on-line/web-based reporting, to free personnel time to meet the growing needs of the State.

1-D: Data and Records

Advisory

States should establish and maintain records systems to fully support impaired driving program. States should also use data from other sources, such as the U.S. Census Bureau, Fatality Analysis Reporting System (FARS) and Crash Outcome Data Evaluation System (CODES), to supplement their systems. The State records system should:

- *Permit the State to quantify the:*
 - * *extent of the problem (e.g. alcohol-related crashes and fatalities)*
 - * *impact on various populations (e.g. by age, gender, race, and ethnicity)*
 - * *level of effort dedicated to address the problem (e.g. level of enforcement activities, training, paid and earned media)*
 - * *impact of the effort (e.g. public attitudes, awareness, and behavior change)*
- *Contain electronic records of crashes, arrests, dispositions, driver licensing actions, and other sanctions of DWI offenders.*
- *Permit offenders to be tracked from arrest through disposition and compliance with sanctions.*
- *Be accurate, timely, linked, and readily accessible to persons authorized to receive the information, such as law enforcement, courts, licensing officials, and treatment providers.*

Status

The 2001 State of Montana Impaired Driving Assessment recommended a strategic plan for developing a state traffic safety data system that would allow a more thorough and detailed analysis of problem areas and trends. Later, the 2004 Traffic Records Assessment recommended the development of a Traffic Records Strategic Plan that would expand and improve traffic data coverage, quality and electronic accessibility. The 2005 Performance and Highway Safety Plan for the State of Montana also includes the development of a Strategic Plan for Traffic Records as a program goal designed to address an identified problem area (Section 3.2.5—Traffic Records, Goal (E)). Moreover, the National Highway Traffic Safety Administration (NHTSA) has identified Traffic Records as a national priority problem area. These previous findings and recommendations, and the State's adoption of traffic records improvement as a priority goal, all point to the need for greater progress in this program area.

The State clearly appreciates that good data and records are crucial, since the analysis of information enables the State to identify high priority safety problems and enables it to select those specific countermeasures likely to have the greatest effect on well-defined problems. Overall, problem identification through data and records analysis has led the State to conclude that driving under the influence (DUI) of alcohol and drugs and the lack or misuse of safety restraints are major issues for traffic safety. Beyond these basic conclusions, however, there are several additional specific and related findings derived from the data that the State plans to address with countermeasures. These findings include:

1. High rates of DUI injury and fatality;
2. Low rates of safety belt use among young males;

3. A very high rate of DUI crashes, injury and fatality among the Native American population;
4. A declining, but nevertheless serious, rate of severe injury crashes; and
5. The large impact that chronic DUI offenders have in increasing overall traffic safety risk.

The collection, presentation and analysis of more comprehensive records data should become possible under the Traffic Records Strategic Plan initiative and also through the planned integration of judicial data under implementation of the "Full Court" management information system. More complete, refined and electronically accessible data should permit even more focused analyses of the impaired driving priority problems already identified by the State.

The Montana Highway Patrol investigates fatal crashes on the reservations and the State believes it does have accurate and complete fatal crash data. The data on fatalities indicates that the target group to be reached is males of 18 - 34 years of age. It is presumed that most reservation fatalities are alcohol-related, though these data are not routinely gathered.

Tribal representatives reported differing views with respect to sharing traffic safety data. Tribes would benefit from access to computerized traffic safety data and feel that the tribes would be well-served by entering into an agreement to share, particularly if they could have access to computer equipment to use new data systems.

Some tribes seem willing to release general statistics but would insist upon removal of any personal identity information citing tribal sovereignty and members' expectation of confidentiality. Other tribes appear to be less willing to share information.

Because state officials agree that they need data from on-reservation crashes to address safety issues, it might offer the tribes an incentive to collect and share data. It could also work with the tribes to identify their concerns and interests (e.g. confidentiality of access), so that an appropriate structure can be developed to maintain the information. Support for tribes could be provided, for example, by grant funding for data collection. Fundamentally, the transmittal of information from the tribes to the State is voluntary and will likely need to include financial or other incentives.

Recommendations

- ◆ Pursue records database expansion and accessibility under the Strategic Plan for Traffic Records scheduled for completion in 2005.
- ◆ **Work with tribal governments toward incorporation of Native American reservation data into the statewide database. Include summary data on all crashes, DUI citations, convictions and sentences.**
- ◆ **Include Native American representation in the current strategic planning process for state and tribal records, and on the State's Traffic Records Coordinating Committee.**

- ◆ Use the “Full Court” system data to document and analyze trends in DUI citations, convictions and sentences.
- ◆ Specifically identify DUI repeat offender data for citations, convictions and crashes by county or geographic area.
- ◆ Gather, compile and analyze information on severe injury crashes as the data become available from other sources, such as Emergency Medical Services and hospitals.
- ◆ Adopt a statewide electronic uniform traffic citation form as a way to achieve timely, consistent data reporting on DUI and other offenses.

1-E: Evaluation

Advisory

States should routinely evaluate all impaired driving programs and activities to determine effectiveness and ensure that resources are allocated appropriately. The evaluation should be:

- *Planned before programs are initiated to ensure appropriate data are available and adequate resources are allocated.*
- *Designed to use available traffic records and other injury data.*
- *Used to determine whether goals and objectives have been met and to guide future programs and activities.*
- *Organized and completed at State and local levels.*
- *Reported regularly to project and program managers and policy makers.*

Status

Montana traffic safety programs conduct process or output evaluations. There is much less emphasis on outcome and impact evaluations.

Communications/media program consultants measure both reach and frequency of media messages to determine whether the program's objectives are being met. Data are derived from media services which allows Banik Communications to indicate whether and to what extent the media buys are reaching their intended target audience. Banik also provides important return on investment (ROI) information by providing the estimated value of free media placements that are obtained in conjunction with media buys. There was no report on information, attitudinal or recall data to indicate whether or how much impact the media program was having on its audience.

Reports from the Safe Kids/Safe Communities (SKSC) are also primarily output-oriented. Number of trainings conducted, number of persons trained, number of free rides provided, number of schools participating, and similar information is provided. In addition, indication of the extent of community support is reported according to the value of contributions from other partners. Indications of this financial investment by the community are an important indicator of community "buy-in."

Compliance checks of restaurants, bars and convenience stores are often evaluated on a "pass" rate. When the percent of those passing increases, then the compliance check program is considered to be successful. For example, when Great Falls Police Department initiated compliance checks, only about 36 percent passed. The latest compliance check shows almost a 93 percent compliance rate. A low pass rate, conversely, is an indicator that procedures for serving alcohol need to be tightened.

The Office of Public Instruction (OPI) conducts a Youth Risk Behavior Survey every two years. Because this survey has an extended history of consistent questions, it provides an important tool for helping to determine progress and changes in youth attitudes and behavior. Trend data can be pulled and analyzed from this survey to provide indicators regarding how or whether youth

are responding to attempts to reduce their drinking and their drinking and driving. Several examples were provided of ways in which the data from this survey are used. The information has been shared with school administrators to show a problem needs to be addressed. Results have been incorporated into grant proposals to request funding, such as for the Safe and Drug Free Schools grants. Applications for this program must be data based and include the source of the data.

The driver education program in this, as well as in any other states, provides one of the more problematic programs to evaluate. Major attempts to show that driver education reduces the incidence of crashes among those who take it have all failed. It has been shown, however, that driver education increases knowledge and basic skills.

Another source of evaluation has been the Mothers Against Drunk Driving (MADD) "Rating the States" programs that judge each state on MADD-selected criteria for which each state is then given a grade.

Intervention programs appear to maintain some of the best data regarding their programs' successes. Some programs attempt to track their clients in order to determine recidivism. The completion rates for the programs are known. However, since there may be significant local adjustments to how a program, such as Assessment, Course and Treatment (ACT) is conducted, these programs cannot determine exactly what might or might not be successful about the program.

Much of the evaluation for the impaired driving program and its various components relies on anecdotal evidence. Law enforcement officers "know" that DUI arrests are frequently downgraded to lesser offenses. Judges have individual opinions on what remedy is effective and so rule accordingly and not always necessarily in accordance with the law. By law DUI cases cannot be deferred, although cases are being deferred.

Lack of data, no centralized data repository, few linkages among various components, and the complexity of the system made even further complicated by the differing traffic codes and modus operandi on the reservations are all very large barriers to evaluation.

Recommendations

- ◆ **Develop, fund, and implement a comprehensive evaluation plan to include process and impact evaluation for the impaired driving program.**
- ◆ Conduct a statewide attitudinal and knowledge survey of Montana drivers and repeat on approximately a biennial basis to track traffic safety trends in knowledge and beliefs.
- ◆ Support linked and centralized data bases.
- ◆ Incorporate task measures into the Highway Safety Plan and subsequently evaluate whether tasks were completed according to plan.

1-F: Resources

Advisory

States should allocate sufficient funding, staffing, and other resources to support impaired driving program. Programs should seek to be self-sufficient and costs should be borne by impaired drivers. The ultimate goal is for State impaired driving programs to be fully supported by impaired drivers and to avoid dependence on other funding sources. States should allocate funding, staffing, and other resources to impaired driving programs that are:

- *Adequate to meet program needs and proportional to the impaired driving problem.*
- *Steady and derived from dedicated sources, which may include public or private funds.*
- *Financially self-sufficient and, to the extent possible, paid by the impaired drivers themselves. Some States achieve financial self-sufficiency using fines, fees, assessments, surcharges, or taxes. Revenue collected from these sources should be used for impaired driving programs rather than returned to the State Treasury or General Fund.*

Status

For a state with a small population, Montana has a relatively significant amount of federal traffic safety funds dedicated to addressing the impaired driving problem. First, there is the base Section 402 funding which is allocated to any designated priority area within an approved Highway Safety Plan (HSP) and which, for Montana, helps fund state staff and travel. For FY '05, \$961,411 of 402 funds is planned for the alcohol and other drugs program area. Supplementing the 402 funds are funds from Section 154 and Section 164. See table below for a summary of funds dedicated to impaired driving, as coded AL, for FY '05. These amounts do not reflect the total commitment of the State Highway Traffic Safety Office (SHTSO); other funds may be expended to support the impaired driving program, as a portion of other types of projects (such as planning and administration), but are not coded AL for purposes of the HSP.

SHTSO "AL" Funds Planned for FY '05

FUNDING SECTION	AMOUNT PLANNED
402	\$ 961,411
154	\$ 3,702,443
164	\$ 674,842
TOTAL	\$ 5,338,696

Source: FY '05 HS Form 217

The State also expects \$250,000 in Section 163 Strategic Evaluation States (SES) funds to implement visible impaired driving enforcement and media support.

Tribal court judges and tribal law enforcement officers are invited to attend training at no charge to them except for time and travel.

A key issue for the State regarding these funds is whether the tribal governments are eligible grantees. Different opinions regarding this question were expressed during the presentations. Concern was also expressed that the tribes, as sovereign nations, could not be held accountable for administration of these funds. The State does not currently provide traffic safety grant funds directly to a tribe. A media project is funded by the State which further subcontracts with an individual and two entities on three reservations. This project was described as a pilot program with the intent to expand it to other reservations. The SHTSO is also exploring the feasibility of loaning needed equipment to Bureau of Indian Affairs (BIA) or tribal law enforcement in exchange for securing traffic reporting data from the tribes.

Impacting the amount of these funds that can actually be dedicated to project activities is a law passed in 2002 requiring all federally funded programs to charge an indirect cost rate. For FY '05, this rate is 12.38 percent, amounting to approximately \$576,547 in indirect costs charged to the SHTSO federal funds.

The State does make a significant commitment of state funds by dedicating \$100 of every DUI-related driver license reinstatement fee to the counties for local DUI task forces. However, this law (61-2-107) specifically dedicates these funds to the counties, making the reservations ineligible. The law also does not make any provision for state administration, coordination or oversight of the funds and does not provide for disposition of those funds from those counties which will not or cannot meet the provisions of 61-2-108 for a drinking and driving prevention program.

The federal and state governments also dedicate millions in funding resources to other portions of a total and comprehensive traffic safety and impaired driving program. These funds come from state appropriations and other federal grants. Some of the more significant examples include law enforcement conducted by the Montana Highway Patrol, the state breath test program, costs of adjudication and incarceration, Medicaid and block grants for prevention and intervention programs, and Indian Health Services programs for the reservations. For example, the Department of Corrections provides state funds for Warm Springs Alcohol Treatment and Change (WATCH) program, an addiction treatment program for DUI felons at a cost of \$9,000 per client.

These types of costs are replicated and paid for at the county and community level as well.

Additional resources are available from business, private sources, and volunteers. Donations of media time and space, for example, double or triple the SHTSO investment in public information campaigns.

While limited, there are some fee-based programs that require a financial commitment from the DUI offender. The Missoula Turning Point Addiction Treatment Services office charges a \$300 fee to attend the Assessment, Course and Treatment (ACT) program. The Alcohol and Drug Services of Gallatin County charges a \$200 fee, and the Butte Silver Bow Chemical Dependency Services falls in the middle with a \$250 fee per offender for the ACT program.

Recommendations

- ◆ Dedicate state funds to state administration, staffing and indirect costs for the SHTSO program in order to free up federal funds for program activities.
- ◆ Clarify policies regarding the provision of grant funds to the tribes.
- ◆ Amend state law 61-2-107, “License reinstatement fee to fund county drinking and driving prevention programs,” to provide for Montana Department of Transportation (MDT) coordination and administration of the program and tribal funding eligibility.
- ◆ Create opportunities for additional fee-based programs and corporate/private sponsorship.

II. PREVENTION

Prevention programs seek to reduce impaired driving through approaches commonly associated with public health – altering social norms, changing risky or dangerous behaviors, and creating safe environments. Prevention programs promote activities that educate the public on the effects of alcohol and other drugs, limit availability, and discourage those impaired by alcohol and other drugs from driving. Prevention programs may include responsible alcohol service practices, transportation alternatives, public information and education, and community-based programs carried out in schools, at work sites, in medical and health care facilities, and by community coalitions. Programs should prevent underage drinking for persons under 21 years of age. They should prevent over-service and impaired driving by persons 21 or older. Prevention efforts should be directed toward populations at greatest risk. They should use programs and activities that are science-based and determined to be effective.

2-A: Responsible Alcohol Service

Advisory

States should promote policies and practices that prevent underage drinking by persons under 21 years of age and over-service to persons 21 and older. States should:

- *Adopt and enforce programs to prevent sales or service of alcoholic beverages to persons under the age of 21. Conduct compliance checks and “Cops in Shops” activities and support the proper use of technology in alcohol retail establishments, particularly those catering to youth, to verify proper and recognize false identification.*
- *Adopt and enforce alcohol beverage control regulations to prevent over-service. Prohibit service to visibly intoxicated patrons, restrict alcohol sales promotions (such as “happy hours”), limit hours of sale, establish conditions on the locations of establishments to limit impaired driving (e.g., zoning restrictions) and require beer keg registration.*
- *Provide adequate resources (including funds, staff, and training) to enforce alcohol beverage control regulations. Coordinate with traditional State, county, municipal, and tribal law enforcement agencies to determine where impaired drivers had their last drink and use this information to monitor compliance with regulations.*
- *Promote responsible alcohol service programs, written policies, and training.*
- *Encourage alcohol sales and service establishments to display educational information to discourage impaired driving and to actively promote designated driver and alternative transportation programs.*
- *Provide that commercial establishments and social hosts may be held responsible for damages caused by a patron or guest who was served alcohol when underage or visibly intoxicated (dram shop or social host liability.)*

Status

Montana ranks 9th among the 50 states in per capita consumption of alcohol. Montanans consume an average of 2.55 gallons of ethanol compared to the national average of 2.18 gallons. A recurring theme throughout the assessment was that Montana has a culture that is

characterized by the ready availability of alcohol, tolerance for heavy consumption and use by young people as a “right of passage.” Alcohol is readily available throughout Montana.

Montana requires licenses for the sale of alcohol for on-premise consumption in a variety of settings, including taverns and restaurants, as well as a variety of special settings, such as cabarets, resorts and special events. For off-premise consumption, Montana is one of 18 “control” states, that is, all distilled spirits and fortified wines are available only from state-operated stores. However, Montana has transferred operation of state-controlled stores to private vendors. In addition, distilled spirits by the bottle are available in taverns on a limited basis. Beer and table wines for off-premise consumption are available at a number of licensed retail outlets, including convenience stores, drug stores and supermarkets.

Legislation in 1947 restricted the number of liquor licenses to a number allocated on a quota or population formula basis; however, there are many licenses that pre-date that law and have been transferred since that time. In most areas, no new licenses can be issued. The result is that existing licenses have developed a significant market value, in some cases in excess of \$300,000. In addition, many areas, including the largest cities, have about twice as many licenses as would be allowed by the quota. The city of Helena has adopted a new class of license, which further increased the number of outlets.

Until 2003, special event licenses were readily available. Legislative change restricts special event licenses to not-for-profit organizations and a few specified events and organizations. The number of special event permits dropped from over 1,600 prior to the change to approximately 600 last year.

Sale of alcohol is restricted to the hours of 8:00 a.m. and 2:00 a.m.

Montana does not have prohibitions on promotions such as “Happy Hours” or free drinks.

Montana law includes Dram Shop provisions that assign liability to licensees, their employees, as well as individuals who serve alcohol.

Montana has no requirement for responsible server training; however, server training is widely available through local Safe Kids/Safe Communities coalitions. In addition, some large chain alcohol outlets require employees to complete server training.

Montana has a new keg registration law that will take effect in October of 2005.

Law enforcement agencies do not capture information regarding last point of consumption. This information would be useful in determining which establishment routinely over serves its customers.

Three of the seven reservations (Crow, Rocky Boy and Northern Cheyenne) are “dry” reservations, meaning that no alcohol may be sold on the reservation. Some treaties prohibit the sale of alcohol within a specified distance of the reservation border. In all of those cases, the border towns near the reservation sell liquor and are prime spots for the purchase of alcohol by

tribal members. Four of the seven reservations permit alcohol to be sold on the reservation. All establishments on these reservations are jointly licensed by both the tribe and the State. An establishment may not do business if either the tribe or the State revokes the liquor license. Moreover, tribal governments can and often do request certain accommodations from liquor distributors (e.g. one tribe requested the liquor distributor to suspend alcohol sales during a period of extremely cold weather and during a prom night event). Business representatives mentioned that in some cases a tribal identification card may not contain the information necessary for state compliance requirements (e.g., picture ID, birthdates, non-alterable). They are working with the tribes on this.

Compliance checks are used by local law enforcement agencies to prevent the sale or service of alcoholic beverages to persons under the age of 21.

Recommendations

- ◆ Enforce treaties that call for alcohol establishments to be a specified distance from “dry” reservation borders.
- ◆ Encourage all law enforcement to report the last point of consumption on arrest reports to the Department of Revenue.
- ◆ Enact legislation to prohibit happy hour and promotional events.

2-B: Transportation Alternatives

States should promote alternative transportation programs that enable drinkers 21 and older to reach their destinations without driving. States should:

- *Actively promote designated driver and safe ride programs, especially during high-risk times, such as holidays or special events.*
- *Encourage the formation of public and private partnerships to financially support alternative transportation programs.*

Status

In urban areas, the State has several good examples of free ride home programs which are initiated, supported and/or funded by the various community coalitions or DUI task forces. These programs receive resources from both public and private sources. In the larger communities, free cab rides home are funded by the local beverage distributor or alcohol vendors. The programs are coordinated and publicized by the coalitions or task forces, and the bars and restaurants.

One example is “Home Free Missoula,” funded by a \$250 fee paid by the taverns which in turn receive 100 free cab fare coupons to be provided to patrons. Approximately 43,000 rides have been given since the inception of this program in 1986. Another example, “Enjoy Flathead Responsibly” also includes free rides home provided by the local beverage wholesaler.

Other areas in the State, particularly rural and frontier counties and the reservations, do not have similar resources available. In the vast majority of the State, alternative transportation may be provided by friends or family.

The situation is further complicated by the scarcity of public transportation. Greyhound recently discontinued several routes across the State. In another example, the reservation public transportation system ends at 5:00 p.m., creating a significant hardship among those needing transportation for any reason.

The use of designated drivers varies considerably. The Montana Tavern Association (MTA) provides no material nor conducts no particular program in this regard with its members. There is some indication of inappropriate use of free ride and designated driver programs. In one instance, free rides were being provided to transport college students, including underage students, to and from bars. There is also some anecdotal evidence of designated drivers being used by underage drinkers.

Recommendations

- ◆ Expand public transportation service.
- ◆ Include information in media communications and education programs regarding the benefits of a designated driver.

- ◆ Provide incentives to patrons, such as free soda or free desserts, who choose to be the designated driver for their group.
- ◆ **Ensure that designated driver and safe ride programs are age-appropriate, include health risk information, and discourage over-consumption.**

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2-C: Public Information and Education

Advisory

States should develop and implement public information and education (PI&E) programs directed at underage drinking, impaired driving, and reducing the risk of injury, death, and the resulting medical, legal, social, and other costs. PI&E programs should be culturally relevant, and appropriate to the audience. States should:

- *Focus PI&E efforts on increasing knowledge and awareness, changing attitudes, and modifying behavior.*
- *Develop and implement a year round PI&E plan that includes:*
 - * *Messages coordinated with National campaigns*
 - * *Special emphasis during holiday periods and other high-risk times throughout the year, such as New Year's, 4th of July, Labor Day, Halloween, prom, and graduation*
 - * *Appropriate use of messages that emphasize underage drinking, impaired driving enforcement, and personal responsibility, including use of designated drivers and alternative transportation*
 - * *Information about legal, health, cost, and other consequences of underage drinking, and impaired driving*
 - * *Messages that are culturally relevant and linguistically appropriate*
 - * *Paid, earned, and donated media*
- *Direct PI&E efforts at populations and geographic areas at highest risk or with emerging problems (such as youth, young adults, repeat, and high BAC offenders, and drivers who use prescription or over-the-counter drugs that cause impairment).*
- *Use creativity to encourage earned media coverage, using a variety of messages or "hooks" (such as inviting reporters to "ride-along" with law enforcement officers, conducting "happy hour" checkpoints, or observing under-cover liquor law enforcement operations).*
- *Encourage communities, businesses, and others to financially support and participate in PI&E efforts to extend their reach, particularly to populations and in geographic areas at highest risk.*

Status

Montana has a variety of PI&E activities, including locally developed campaigns and messages coordinated with national campaigns. The State Highway Traffic Safety Office (SHTSO) supports a major media campaign based on a social marketing campaign. A media-consulting firm distributes media materials using media placement plans based on market data. The campaign is well coordinated, including monitoring reach (the size and characteristics of the audience), and frequency (the number of times a message is run). The campaign has generated significant unpaid media time. Messages are presented on television, radio and in print media. While the media contractor has data representing frequency and reach, there has been no evaluation of message recall, interpretation or related change in attitudes or behaviors.

A common theme among presenters during the assessment process was that Montanans place a very high value on independence and freedom from intervention from the government. This includes responding strongly against perceived threats of aggressive DUI enforcement. Major

PI&E campaigns primarily address the chances and consequences of being caught for DUI. However, these messages were designed in deference to this perceived attitude. There has been no evaluation to determine if this perception is, in fact, common or if the public or target audiences accept the current campaign.

Local Safe Kids/Safe Communities (SKSC) coalitions conduct a variety of PI&E campaigns and events often utilizing crash data and other Montana and local information.

For several years, the primary PI&E effort was a statewide media campaign supported by federal funds through SHTSO and designed and prepared by Montana State University (MSU). The campaign theme is “Most of Us.” The theme refers to results of surveys that showed a dramatic difference between young people’s perceived level of alcohol and other drug use and the level of reported use. The “Most of Us” campaign includes media spots that are intended to provide a more accurate perception of the norm based on the survey results. A critical component of the program was the ability to purchase electronic media time to air spots that otherwise would have been broadcast only as public service announcements. An MSU evaluation of the campaign concluded that the campaign had a significant effect on seatbelt use, support for the .08 BAC law and other traffic safety issues. The “Most of Us” campaign continues on a reduced scale and no new messages are being developed with SHTSO funds.

Banik Communications, the media firm that developed the current statewide media campaign for the State, also developed a strategy to partner with Native communities. Banik subcontracted with “grassroots” community organizations on three reservations. Each of the participating communities had a perceived concern about crash rates and substance abuse rates. In addition, these communities reported very low rates of seatbelt use and high rates of other unsafe driving practices e.g., lack of use of infant car seats, excessive speed, unsafe roads. These communities were open to partnership because it offered them multiple benefits: employment, monetary compensation and education. Each reservation has a community college that was approached for guidance through an advisory board and to secure interns to do the actual work. Influential members of the community backed each initiative. These individuals are culturally respected within the community, but also seek to change attitudes through education.

The community subcontractors were pivotal in designing slogans and media campaigns that provided a good “cultural fit” for the community. In addition, they identified prime sites for intensive coverage (e.g., at summer gatherings such as pow-wows and rodeos that attract large numbers of people), and they attended those gatherings to get the word out. There was a great deal of discussion of innovative use of tribal radio stations and newspapers in the campaign. The Blackfeet Tribal College also has its own TV station. Although there are significant limitations to effective media coverage in Indian country, Banik has identified the primary media sources on each reservation and has worked with the community to design programs that are culturally appropriate.

Recommendations

- ◆ Evaluate the current media campaign to determine the interpretation of and reaction to messages by the public and target audiences.

- ◆ Coordinate PI&E messages used by local SKSC and DUI Task Force coalitions with the statewide media campaign.

2-D: Community-Based Programs

Community-based programs implement prevention strategies at the local level through a variety of settings, including in partnerships involving traffic safety, schools, employers, medical and health care professionals, and community coalitions and traffic safety programs.

2-D-1: Schools

Advisory

School-based prevention programs, elementary school through college and trade school, can play a critical role in preventing underage drinking and impaired driving. These programs should be developmentally appropriate, culturally relevant, and coordinated with drug prevention and health promotion programs. States should:

- *Implement K-12 traffic safety education, with appropriate emphasis on underage drinking and impaired driving, as part of a comprehensive health education program.*
- *Promote alcohol- and drug-free events throughout the year, with particular emphasis on high-risk times, such as homecoming, spring break, prom and graduation.*
- *Establish and support student organizations that promote traffic safety and responsible decisions; encourage statewide coordination among these groups.*
- *Provide training to school personnel (such as resource officers, health care providers, counselors, health educators, and coaches) to enable them to provide information to students about traffic safety and responsible decisions, and identify students who may have used alcohol or other drugs (Drug Impairment Training for Education Professionals).*
- *Encourage colleges, universities, and trade schools to establish and enforce policies to reduce alcohol, other drug, and traffic safety problems on campus, and to work with local businesses and law enforcement agencies to reduce such problems in neighboring communities.*

Status

Local Safe Kids/Safe Communities coalitions and local DUI Task Forces conduct impaired driving and traffic safety education activities in their local schools. Activities include mock crashes, use of Fatal Vision goggles and providing information based on local crash data.

Public schools in Montana offer both comprehensive health education and driver safety education. Each District may or may not offer driver education. If they offer Driver's Education, they are required by law to offer sufficient classes so that all eligible students can enroll. The Traffic Education Unit of the Health Enhancement and Safety Division of the Office of Public Instruction (OPI) recently revised the driver education curriculum. The new Curriculum Guide is based on the concept of Traffic Education, a more comprehensive approach than traditional driver education.

The OPI offers comprehensive curriculum, but local districts are not required to use them. Local curriculum must meet state standards, but the process for approval is not strictly regulated. This

creates a situation where local districts could offer little or no attention to DUI or other substance abuse issues or could be providing inconsistent messages.

Some schools in Montana have chapters of Students Against Destructive Decisions (SADD). In odd numbered years, the OPI conducts the Youth Risk Behavior Survey (YRBS) in high schools and middle schools. In the 2003 YRBS, it was reported that over 80 percent of all Montana high school students have tried alcohol and 49.5 percent reported drinking at least once in the 30 days prior to the survey. Over one in four (28.4 percent) reported driving after drinking at least once in the past 30 days and 36.9 percent reported riding with a driver who had been drinking.

In even number years, The Chemical Dependency Bureau (CDB) of the Addictive and Mental Disorders Division (AMDD) of the Montana Department of Public Health and Human Services (DPHHS) conducts the Prevention Needs Assessment Survey based on the risk and protective framework of prevention. In 2000, the proportions of 8th grade students at risk for the various factors ranged from approximately 30 percent for “early initiation of antisocial behavior” to over 60 percent for “sensation seeking.” Other prevalent risk factors included “low attachment to school,” “family conflict” and “friends who use drugs.” Tenth and 12th graders showed a similar risk profile.

These surveys are being used to plan and implement substance abuse prevention programs at the local level. The risk and protective framework of prevention utilizes risk profiles to identify science-based programs that will address specific risk factors. The high prevalence of risk factors described above indicate a need for “selected” prevention strategies, that is, programs that address young people who are known to be at risk, as opposed to “universal” prevention aimed at all students.

Montana recently received a Strategic Prevention Framework State Incentive Grant (SPF-SIG) under which local organizations and coalitions will implement science-based prevention strategies consistent with a data driven needs assessment. Many science-based programs are school-based and will be implemented by or in schools.

Many schools currently use science-based substance abuse prevention programs such as Life Skills Training (LST).

A significant concern of traffic safety and substance abuse prevention educators is the increasing time demands related to meeting “No Child Left Behind” and other academic requirements. The issue of academics verses prevention is best addressed from the risk and protective framework of prevention. It has been demonstrated that improved academic performance results from science-based programs that reduce risk and increase protective factors.

The majority of Native American students attend Montana public schools. A significant concern is the rate of transitions of Native students who routinely move from the reservation to off-reservation communities, sometimes several times per school year. This is a function of cultural and economic factors. In those schools closest to the reservations, school personnel often try to coordinate the curricula so that students will not be adversely affected by frequent moves. The

Great Falls School District has an Indian Education Department and hires Native personnel to serve as Indian Education Coordinators providing mental health screening and support services for students and families who demonstrate risk factors for substance abuse. Some schools with significant Native student populations are implementing mentoring programs, character education, and Protecting You Protecting Me, a model program from Mother Against Drunk Driving (MADD). On many reservations Boys and Girls Clubs serve an important function in communities that do not offer much for students in terms of extracurricular activities. One representative mentioned that the reservation community had secured a federal grant to start a “Healing to Wellness Court” for youthful offenders, which is structured to hold kids and families accountable and use culturally appropriate strategies to build a sense of community and responsibility.

Recommendations

- ◆ **Coordinate impaired driving and traffic safety prevention activities with science-based substance abuse prevention strategies at the state and local level.**
- ◆ Utilize the Youth Risk Behavior Survey (YRBS) and Montana Prevention Needs Assessment Survey in planning, developing and evaluating impaired driving and traffic safety programs.

2-D-2: Employers

Advisory

States should provide information and technical assistance to employers and encourage them to offer programs to reduce underage drinking and impaired driving by their employees and their families. These programs should include:

- *Model policies to address underage drinking, impaired driving and other traffic safety issues, including safety belt use and speeding.*
- *Employee awareness and education programs.*
- *Management training to recognize alcohol and drug use and abuse, and appropriate responses.*
- *Screening and brief intervention, assessment and treatment programs for employees, as appropriate, such as through an employee assistance program.*
- *Underage drinking and impaired driving prevention programs for youthful employees and programs that address use of prescription or over-the-counter drugs that cause impairment.*

Status

Montana has few large employers. As a result, there are few opportunities for traditional approaches to employer programs. Some large employers have substance abuse policies that include prohibitions on use while at work and conduct random drug testing. Developing and implementing prevention programs in small employers is a challenge because of cost and confidentiality issues.

Recommendations

- ◆ Provide employers with impaired driving and traffic safety materials and information.

2-D-3: Community Coalitions and Traffic Safety Programs

Advisory

Community coalitions and traffic safety programs provide the opportunity to conduct prevention programs collaboratively with other interested parties at the local level, and may include representatives of government - highway safety, enforcement, criminal justice, public health, driver licensing, and education, business – employers and unions, the military, medical, health care, and treatment communities, and multi-cultural, faith-based, advocacy, and other community groups. States should:

- *Encourage communities to establish community coalitions or traffic safety programs, comprised of a wide variety of community members and leaders.*
- *Provide information and technical information to these groups, including data concerning the problem in the community and information identifying science-based underage drinking and impaired driving programs.*
- *Encourage these groups to provide support for local law enforcement and prevention efforts aimed at reducing underage drinking and impaired driving, including designated driver and alternative transportation programs for persons 21 or older.*
- *Encourage professionals, such as prosecutors, judges, nurses, doctors, emergency medical personnel, law enforcement officers, and treatment professionals, to serve as community spokespeople to educate the public about the consequences of underage drinking and impaired driving.*

Status

There are 17 Safe Kids/Safe Community (SKSC) coalitions operating in communities throughout Montana. These coalitions provide a variety of impaired driving prevention activities including Public Information and Education (PI&E), implementing mobilization campaigns, providing server training, supporting safe ride programs and implementing prevention activities in local schools. The SKSC Coalitions are subcontracted from Healthy Mothers/Healthy Babies, a not-for-profit organization operating statewide. Few, if any, of the impaired driving prevention activities are science-based or have been evaluated for impact on the target populations.

Previously there were DUI Task Forces throughout Montana. However, funding changes resulted in most DUI Task Forces being eliminated. Several task forces survived with local support and recently several more have been reestablished.

Montana recently received a Strategic Prevention Framework State Incentive Grant, which will provide substance abuse resources to local prevention coalitions. The Chemical Dependency Bureau (CDB) of the Addictive and Mental Disorders Division (AMDD) of the Montana Department of Public Health and Human Services (DPHHS) supports 19 regional Prevention Specialists to assist in development and implementation of prevention programs.

Sparse population with few cities and many small towns characterizes Montana. This might cause a number of problems in implementing some services, but it results in coordination among numerous coalitions since the same community leaders and traffic safety professionals are

members of virtually all local coalitions. Many presenters in the assessment mentioned that they were members of the Safe Kids/Safe Communities coalition, the DUI Task Force, the local substance abuse prevention coalition and other related coalitions. While this does not guarantee coordination of efforts, it represents the potential to maximize resources and reduce redundancy.

Recommendations

- ◆ Coordinate impaired driving and traffic safety prevention activities with science-based substance abuse prevention strategies.
- ◆ Evaluate impaired driving prevention activities as well as the overall impact of traffic safety coalitions.

III. CRIMINAL JUSTICE SYSTEM

Each State should use various components of its criminal justice system – laws, enforcement, prosecution, adjudication, criminal and administrative sanctions, and associated publicity - to achieve both specific and general deterrence.

Specific deterrence seeks to increase the probability that impaired drivers will be detected, arrested, prosecuted, and subject to swift, sure, and appropriate sanctions. Using these measures, the criminal justice system seeks to reduce future recidivism. General deterrence seeks to increase the perception that impaired drivers will face these consequences, so people who might otherwise be tempted to do so will choose not to drive impaired.

A multidisciplinary approach and close coordination among all components of the criminal justice system are needed to make the system work effectively. In addition, coordination among law enforcement agencies, on the State, county, municipal, and tribal levels, is needed to create and sustain both specific and general deterrence.

3-A: Impaired Driving Laws

Advisory

Impaired driving laws should be sound, rigorous, and easy to enforce and administer. The laws should clearly: define the offenses; contain provisions that facilitate effective enforcement; and establish effective consequences. The offenses should include:

- *Driving while impaired by alcohol or other drugs (whether illegal, prescription, or over-the-counter), and treating both offenses with similar consequences.*
- *A blood alcohol concentration (BAC) limit of 0.08, making it illegal “per se” to operate a vehicle at or above this level without having to prove impairment.*
- *Zero Tolerance for underage drivers, making it illegal “per se” for persons under age 21 to drive with any measurable amount of alcohol (e.g., 0.02 or greater).*
- *High BAC (e.g., 0.16 or greater), with enhanced sanctions above the standard impaired driving offense.*
- *Repeat offender, with increasing sanctions for each subsequent offense.*
- *Test refusal, with sanctions comparable to or stricter than a high BAC offense.*
- *Driving with a license suspended or revoked for impaired driving, vehicular homicide or causing personal injury while driving impaired as separate offenses, with additional sanctions.*
- *Open container, which prohibits possession or consumption of any open alcoholic beverage in the passenger area of a motor vehicle located on a public highway or right-of-way.*
- *Primary safety belt requirements, which do not require that officers observe or cite the driver for another offense.*

Provisions to enhance effective enforcement should:

- Authorize law enforcement to conduct sobriety checkpoints, in which vehicles are stopped on a nondiscriminatory basis to determine whether operators are driving while impaired by alcohol or other drugs.
- Authorize law enforcement to use passive alcohol sensors to improve detection of alcohol in drivers.
- Authorize law enforcement to obtain more than one chemical test from an operator suspected of impaired driving, including preliminary breath tests, evidential breath tests, and screening and confirmatory tests for alcohol or other impairing drugs.
- Require mandatory BAC testing of drivers involved in fatal and serious injury-producing crashes.

Effective penalties should include:

- Administrative license suspension or revocation (ALR), for failing or refusing to submit to a BAC or other drug test.
- Prompt and certain administrative license suspension of at least 90 days for first offenders determined by chemical test(s) to be at or above the State’s “per se” level.
- Enhanced penalties for test refusals, high BAC, repeat offenders, driving with a suspended or revoked license, vehicular homicide or causing personal injury while driving impaired, including: longer license suspension or revocation; installation of ignition interlock; license plate confiscation; vehicle impoundment, immobilization or forfeiture; intensive supervision and electronic monitoring; and threat of imprisonment.
- Assessment for alcohol or other drug abuse problems for all impaired driving offenders and, as appropriate, treatment, abstention from use of alcohol and other drugs, and frequent monitoring.
- Driver license suspension for persons under age 21 for any violation of law involving the use or possession of alcohol or illicit drugs.

Status

Driving Under the Influence of Alcohol (DUI) and Driving With .08 or More Alcohol Content (Per Se) Violation

61-8-401 - Driving Under the Influence of Alcohol (DUI)

Offense	Fine	Minimum Sentence	Maximum Sentence	Minimum Imprisonment	D/L License Suspend/Revoke	Probation
1st	\$300 - \$1000	24 hours	6 months	24 hours in County Jail	6 months suspension; probationary d/l	6 months
2nd	\$600 - \$1000	7 days	6 months	48 hours in County Jail	1 year suspension; no probationary d/l	6 months
3rd	\$1000 - \$5000	30 days	1 year	48 hours in County Jail	1 year suspension; no probationary d/l	1 year

4th	\$1000 - \$10,000	13 mos. or for period of treatment	13 months	For period of treatment	1 year revocation; no probationary d/l	1-5 years
5th	\$1000 - \$10,000	13 months	5 years	For period of treatment	1 year revocation; no probationary d/l	1 - 5 years

61-8-406 - Driving With .08 or More Alcohol Content (Per Se) Violation

Offense	Fine	Minimum Sentence	Maximum Sentence	Minimum Imprisonment	License Suspend/Revoke	Probation
1st	\$300-\$1000	None	10 days	None	6 months suspension	6 months
2nd	\$600-\$1000	5 days	30 days	48 hours in County Jail	1 year suspension; no probationary d/l	6 months
3rd	\$1000-\$5000	10 days	6 months	48 hours in County Jail	1 year suspension; no probationary d/l	1 year
4th	\$1000-\$10000	13 months or for period of treatment	13 months	For period of treatment	1 yr. revocation; no probationary d/l	1-5 years
5th	\$1000 - \$10,000	13 months	5 years	For period of treatment	1 yr. revocation; no probationary d/l	1 - 5 years

First time offenders who are granted probationary licenses for DUI or Per Se violations may be restricted to driving only a motor vehicle that is equipped with an ignition interlock device. On a second or subsequent offense, the court in addition to other punishments shall order that each motor vehicle owned by the person at the time of the offense either be seized and subjected to the procedure under 61-8-421, or equipped with an ignition interlock device.

For a first offense DUI or Per Se violation, the judge may recommend that the offender receive a restricted probationary driver's license. If issued, the license will generally state "essential driving only." A judge may refuse to recommend that a restricted probationary driver's license be issued. If the judge does not recommend a probationary driver's license, then the Records and Driver Control Bureau of the Department of Justice (Driver Control) will not issue any license to the offender until the judge does recommend a probationary license or until the six month suspension is completed. To receive a probationary driver's license, an offender must have the judge's recommendation, pay a \$200 reinstatement fee to Driver Control, comply with Montana Assessment, Course and Treatment (ACT) program, and subsequent treatment. The defendant must have cleared any suspension or revocation in any other state.

Defendants convicted of DUI or Per Se violations shall complete a chemical dependency assessment and a chemical education course. For second or subsequent offenses the defendant shall complete chemical dependency treatment, unless a residential alcohol treatment program has been completed. On second or subsequent offenses, the chemical dependency treatment

shall be followed by monthly monitoring for a period of at least one year from the date of admission to the program.

The distinctions between dispositions for DUI and Per Se violations are that for first time Per Se offenders there is no minimum mandatory sentence of incarceration and for second and third time Per Se offenders the minimum incarceration penalties are also less than for comparable offenders who are charged under the DUI statute.

Prosecutions for violations of 61-8-401, 61-8-406 and 61-8-410 (under age 21 with .02 BAC) may not be deferred and hence may not be the subject of pretrial diversion.

Child Endangerment

The 2005 legislature enacted provisions that double the existing sanctions for a DUI if there is a child under the age of 16 in the vehicle. The newly enacted statute doubles the minimum and maximum fines as well as the minimum and maximum imprisonment penalties for first through third offense DUI convictions under the enumerated aggravating circumstances.

Vehicular Homicide

In 2005 Montana enacted a vehicular homicide law. Previously deaths resulting from DUI or Per Se violations were prosecuted under a negligent homicide statute. Under the new statute, a person convicted of vehicular homicide while under the influence shall be imprisoned in a state prison not to exceed 30 years, or be fined an amount not to exceed \$50,000 or both. The imposition of sentence shall not be deferred.

Open Container Law

The 2005 Montana legislature enacted a statewide open container law which has been signed into law. It provides for a fine not to exceed \$100 for knowingly consuming an alcoholic beverage while driving or being in actual physical control of a motor vehicle on a highway. It also applies to passengers within the passenger area of a motor vehicle. The same penalty applies to knowingly possessing an open container of alcoholic beverage within the passenger area of a motor vehicle on a highway. It does not apply to open containers behind the last upright seat of a motor vehicle not equipped with a trunk. Accordingly, it may be permissible to possess an open container behind the driver’s seat in a pickup truck.

**61-8-410 - Operation of a Vehicle by Person Under Age 21
With Alcohol Concentration of .02 or more**

Offense	Fine Minimum	Fine Maximum	Incarceration	License Action	Court Orders
1st	\$100	\$500	none	90 days suspension	Alcohol education and treatment if recommended; Impoundment of vehicle
2nd	\$200	\$500	Up to 10 days	6 months suspension	Alcohol education and treatment if recommended; Impoundment of vehicle
3rd and	\$300	\$500	Minimum 24	1 year	Alcohol education and

subsequent			hours- Maximum 60 days	suspension	treatment if recommended; Impoundment of vehicle
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A court of limited jurisdiction may not order the incarceration of a juvenile except under juvenile detention hearing proceedings and then only in compliance with 61-8-723. Prosecutions for violations of 61-8-410 may not be deferred and hence may not be the subject of pretrial diversion

Other Montana Laws Applicable to Person Under 21 Years of Age

45-5-624 Minor In Possession of Alcohol (Under Age 18)

Offense	Minimum Fine and Penalty	Maximum Fine and Penalty
1st	\$100 and 20 hrs. Community Service; License confiscated for 30 days	\$300
2nd	\$200 and 40 hrs. Community Service; License confiscated for 6 months; Chemical dependency assessment and treatment if recommended	\$600
3rd	\$300 and 60 hrs. Community Service; License confiscated for 6 months; Chemical dependency assessment and treatment if recommended	\$900

The court, in addition to the above provisions, shall order the minor and the parent or parents or guardians to complete and pay all costs of participation in a community-based substance abuse information course that meets the statutory requirements provided such course is available.

A person under 21 years of age commits the offense of possession of an intoxicating substance if the person knowingly consumes or has in the person's possession an intoxicating substance. There are exceptions which allow possession if the person under 21 possesses it in the course of employment or if it is given to them by a parent or legal guardian. This provision, however, does not permit a person under 21 to drive after having consumed alcohol even if it was provided by a parent or guardian.

A person 18 years of age or older who is convicted of possession of an intoxicating substance:

1. First offense - shall be fined an amount not less than \$100 nor more than \$300 and shall be required to perform 20 hours of community service. The minor shall also be ordered to complete an alcohol information course.

2. Second offense - shall be fined an amount not less than \$200 nor more than \$600 and may be required to perform 40 hours of community service. The minor shall also be ordered to complete an alcohol information course and, in the court's discretion, may be ordered to complete drug and alcohol treatment upon the recommendation of a licensed addiction counselor.
3. Third or subsequent offense - shall be fined an amount not less than \$300 nor more than \$900 and shall be required to perform 60 hours of community service, and shall be ordered to complete an alcohol information course. The minor shall be ordered to complete an alcohol information course and, in the court's discretion, may be ordered to complete drug and alcohol treatment upon the recommendation of a licensed addiction counselor. A third and subsequent offender may be imprisoned in the county jail for not exceeding 6 months.

Other Alcohol-related Offenses

Newly enacted alcoholic beverage distribution laws require keg registration upon purchase. The law requires the licensee who sells the keg to attach an identification tag to the keg which must include the licensee's name, address and phone number. Removal or defacement of the tag is a criminal offense. The licensee must maintain information as to the original purchaser and information concerning the person who returns the keg for at least 45 days following return of the keg.

Montana statutes do not impose restrictions on free distribution of alcoholic beverages, happy hour reduced prices or other promotions involving distribution. Montana does have a dram shop law which is contained in statute 27-1-710 entitled "Civil liability for injuries involving alcohol consumption." This statute applies to both individuals and business entities. The law restricts civil liability unless the consumer was visibly intoxicated, was under the legal drinking age or was forced or coerced to consume or was told that the beverage did not contain alcohol. The statute limits non-economic and punitive damage recovery.

Licenses Suspension - Revocation Administrative Components

With the exception of provisions that apply to commercial vehicle operators and drivers who refuse blood or breath tests for alcohol or drugs, Montana does not have an administrative license revocation (ALR) law.

Montana law (61-8-805) does provide for license suspension for operating a commercial vehicle with an alcohol concentration of 0.04 or more. The suspension is immediate and administrative in nature. The peace officer who determines that the person is operating a commercial motor vehicle with an alcohol concentration of 0.04 or more is required to immediately seize the person's commercial driver's license and, on behalf of the department, give the person written notice of suspension and the right to a hearing. Upon receipt of a report certified under penalty of law from the peace officer that the person was operating a commercial motor vehicle with an alcohol concentration of 0.04 or more, the department shall suspend the license, with no provision for a restricted probationary commercial license:

- (a) 1 year, upon receipt of the first report of a 0.04 or more alcohol concentration violation, except that if the violation occurred in a commercial motor vehicle transporting placardable hazardous materials, the suspension must be for 3 years; and
- (b) life, upon receipt of a second or subsequent 0.04 or more alcohol concentration violation report at any time as determined from the records of the department, subject to federal rules allowing for driver rehabilitation and license reinstatement, if otherwise eligible, upon service of a minimum period of 10 years' suspension.

Montana's implied consent law requires drivers to provide a breath sample both before arrest, upon reasonable suspicion, by a Preliminary Alcohol Screening Test (PAST) and following arrest for a DUI or Per Se violation. Refusal to submit to either or both tests results in either a suspension or revocation for up to one year. Suspension occurs upon a first refusal. Revocation occurs upon a second or subsequent refusal within five years. No probationary license can be issued during the suspension or revocation period. Suspensions and revocations are conducted administratively, but the order is subject to review by appeal to a District Court. Refusals under Montana's implied consent law are handled administratively with the officer immediately seizing the license of the person refusing and forwarding it to the department for suspension. Upon seizure of the license, the officer issues a temporary permit which is effective 12 hours after issuance and is valid for 5 days following the date of issuance. The officer also gives the person written notice of the suspension and the right to a hearing.

New License Law Provisions

Montana law provides for the issuance of a probationary driver license following revocation pursuant to a first offense DUI or Per Se offense conviction. In 2005, Montana enacted provisions that require that restricted probationary licenses shall reflect the term of the person's license restrictions. This provision also applies to persons convicted of felony offenses. In those cases the license shall reflect that the operation of a vehicle is authorized by the person's probation officer and that the motor vehicle is equipped with an ignition interlock device.

Montana's laws prohibit driving during revocation or suspension. A new provision provides for enhanced penalties for commission of the offense after suspension or revocation for Montana's DUI or Per Se offenses or similar offenses from other states. The enhanced penalties also apply to persons who drive after a person's license has been suspended for refusal to take a test for alcohol upon arrest. The enhanced penalties include imprisonment for a term of not less than 2 days or more than 6 months, or a fine not to exceed \$2000, or both. The court may also order the person to perform up to 40 hours of community service.

Ignition Interlock Law

Montana law provides for first offense DUI and Per Se offenders to be granted a probationary license by the courts having jurisdiction over their cases. The courts have the discretion to restrict the person to driving only a motor vehicle that is equipped with a working ignition interlock device during the period of the probationary license. A person who is convicted of a second or subsequent offense may be ordered to either have the vehicle seized and subjected to forfeiture or be equipped with a functioning interlock device at the person's expense.

Vehicle Forfeiture Law

Upon a second or subsequent conviction of DUI or Per Se laws or a similar offense under the laws of other states, or if there is a suspension for refusal to take a test for alcohol or drugs, the court shall order, in addition to conventional penalties, that each vehicle owned by the person at the time of the offense be seized and subjected to forfeiture or equipped with an ignition interlock device. The forfeiture law provides protection of security interests if the illegal uses were not known to the security interest holder. It also provides for protection of owners of vehicles who are operated by defendants who operate the owner's vehicle without the owner's consent.

Graduated Licenses for Minors

In 2005 Montana enacted a graduated licensing program for minors that will allow persons less than 18 years of age to progressively develop and improve their driving skills. It requires a learner's license for not less than 6 months and passage of a road or skills test. The minor must present a written certification from a parent or legal guardian that the person has had at least 50 hours of driving experience that was supervised by a parent, legal guardian or person at least 18 years of age who holds a valid driver's license. There are first year restrictions on a driver license that is issued to a minor including not driving between the hours of 11 p.m. and 5 a.m. unless accompanied by a licensed driver 18 years of age or over. There are some exceptions to the restrictions relating to driving for employment, for emergencies and other enumerated purposes. Violations are punishable by suspension and the imposition of community service.

Seatbelt Laws

Montana does not have a primary seatbelt law.

Native American Impaired Driving Laws

All Montana tribes have some form of traffic safety codes. The Salish and Kootenai tribes use the State Traffic Safety Code. The other tribes have their own laws, which may differ from state laws.

Tribal representatives from one reservation described the penalty for DUI as a fine of \$180 and 5 days in jail. There are many repeat offenders on this reservation. On another reservation, tribal representatives described the base penalty for DUI as 2 days in jail and a \$150 fine that can be increased to 4 days in jail or a \$250 fine. There is also authority to impound vehicles. There is no concerted reporting of DUI convictions to Driver Control. As a result, the Records and Driver Control Bureau may not contain documentation of DUI convictions in tribal courts. There is little reporting of license suspensions or implied consent refusals. Accordingly, Driver Control may fail to impose applicable suspension or revocation of driving privileges.

Recommendations

- ◆ Encourage all tribal governments to adopt uniform traffic safety codes that incorporate provisions of the Montana statutes governing DUI, Per Se violations, and the suspension of driving privileges upon conviction or for refusal to comply with the Montana implied consent law.

- ◆ Encourage all tribal courts to report all traffic convictions and case dispositions to the Montana Department of Justice Bureau of Records and Driver Control.
- ◆ Enact an administrative license suspension/revocation (ALR) law, with due process hearing provisions that requires immediate seizure and suspension of any driver license and/or driving privileges upon arrest for DUI or a Per Se violation.
- ◆ Require all convicted misdemeanor DUI or Per Se offenders to be placed on court administered public or private probation supervision to ensure completion of all statutory and discretionary sentence requirements including, completion of chemical dependency assessments, education, and treatment, as well as completion of optional requirements such as abstinence, restitution, community service and ignition interlock use.
- ◆ **Enact felony statutes with mandatory imprisonment penalties that criminalize DUI Manslaughter and Vehicular Homicide when a death occurs incident to the operation of a motor vehicle by a person with a blood alcohol level of .08 or higher or when such person's ability to operate a motor vehicle is diminished due to drugs or alcohol in the body.**
- ◆ Enact felony statutes and mandatory imprisonment penalties that criminalize operation of a motor vehicle by a person with a blood alcohol level of .08 or higher or when such person's ability to operate a motor vehicle is diminished due to drugs or alcohol in the body and the operation has resulted in severe bodily injury or great bodily harm to another.
- ◆ **Enact statutory provisions providing for a one-year suspension for refusing to submit to a chemical test with no provision for a temporary or probationary license for 30 days for a first refusal.**
- ◆ **Enact statutory provisions providing for a two-year suspension for refusing to submit to a chemical test with no provision for a temporary or probationary license for 60 days for a second refusal within five years of a first refusal or DUI or Per Se conviction.**
- ◆ **Enact statutory provisions providing for a criminal penalty of up to six months incarceration in addition to a three-year license suspension for a third time refusal to submit to a chemical test, within any time period, with no provision for a temporary or probationary license.**
- ◆ Enact statutory provisions requiring revocation of license or driving privileges for five years upon conviction of a fourth or subsequent DUI or Per Se violation.
- ◆ Incorporate statutory provisions that prohibit the withholding, deferment or suspension of the adjudication of guilt, sentence or the imposition of sentence upon any defendant who pleads guilty, no contest, or who is convicted after trial of DUI or a Per Se offense.

- ◆ Incorporate statutory provisions in Montana's DUI and Per Se statutes specifically prohibiting the diversion of such prosecutions so as to prevent the dismissal or withholding of judgment or adjudication upon the completion of certain conditions specified by courts or prosecuting authorities.
- ◆ Require the prosecuting attorney to file, with the court of competent jurisdiction, a written statement reciting the basis justifying the reduction or amendment of any DUI or Per Se offense which was initially charged as such to negligent endangerment, reckless or careless driving, or any other lesser pointable traffic offense.
- ◆ **Elevate to felony status, and impose mandatory incarceration for the offense of operating a motor vehicle after suspension or revocation of driving privileges following a third Per Se or DUI conviction or following a conviction for a Per Se or DUI offense which resulted in death, or severe bodily injury or great bodily harm to another.**
- ◆ **Enact a primary safety belt law.**
- ◆ Elevate to felony status conviction, second or subsequent DUI violation or Per Se.

3-B: Enforcement

Advisory

States should conduct frequent, highly visible, well publicized, and fully coordinated impaired driving (including zero tolerance) law enforcement efforts throughout the State, especially in locations where alcohol-related fatalities most often occur. To maximize visibility, the State should conduct periodic heightened efforts and also sustained efforts throughout the year. Both periodic and sustained efforts should be supported by publicity. The State should coordinate efforts among State, county, municipal, and tribal law enforcement agencies. Participating officers should receive training in the latest law enforcement techniques. States should:

- *Ensure that executive levels of law enforcement and State and local government make impaired driving enforcement a priority and provide adequate resources.*
- *Develop and implement a year-round impaired driving law enforcement plan, which includes:*
 - * *periods of heightened enforcement (e.g., 3 consecutive weekends over a period of 16 days) and frequent (e.g., monthly), sustained coverage throughout the year*
 - * *high level of participation and coordination among State, county, municipal, and tribal law enforcement agencies, such as through law enforcement task forces*
- *Use law enforcement professional(s) to serve as liaisons in the State and help enhance coordination and level of participation.*
- *Deploy enforcement resources based on problem identification, particularly at locations where alcohol-related fatal or other serious crashes most often occur.*
- *Conduct highly visible enforcement that maximizes contact between officers and drivers, including sobriety checkpoints and saturation patrols, and widely publicize these efforts - before, during, and after they occur.*
- *Coordinate efforts with liquor law enforcement officials (see Section II.A. Responsible Alcohol Service).*
- *Use technology (e.g., video equipment, portable evidentiary breath tests, passive alcohol sensors, and mobile data terminals) to enhance law enforcement efforts.*
- *Require law enforcement officers involved in traffic enforcement receive state-of-the-art training, such as Standardized Field Sobriety Testing (SFST), emerging technologies for the detection of alcohol and other drugs; selected officers should receive training in media relations, and Drug Evaluation and Classification (DEC).*
- *Expedite the arrest process (e.g., by reducing paperwork and processing time, from time of arrest to booking and/or release).*
- *Measure success, emphasizing quantitative data, including level of effort (e.g., number of participating agencies, checkpoints conducted, arrests made), public awareness (e.g., of message and actual enforcement), reported change in behavior (e.g., reported number of drinking driving trips), and outcomes (e.g., alcohol-related fatalities, injuries, and crashes).*

Status

According to the Montana Board of Crime Control, 132 agencies comprise Montana's law enforcement community. Nearly 2,000 full-time sworn officers include members from municipal, county, state, University Security forces, Airport Security and tribal law **enforcement**

agencies. This equates to 1.5 officers per 1,000 Montanans. Most of these officers work cooperatively to employ multi-agency saturation patrols, in conjunction with highly publicized public awareness campaigns, to combat impaired driving.

Montana has a comprehensive impaired driving and occupant protection program that is substantially funded by the Montana Department of Transportation, State Highway Traffic Safety Office (SHTSO). Approximately four years ago, the SHTSO contracted with the Healthy Mothers, Healthy Babies Montana Coalition to form the Safe Kids/Safe Communities Coalition. Seventeen local Driving Under the Influence (DUI) Task Forces cover 23 counties and 70 to 80 percent of the State's population. The focus of these task forces is to reduce impaired driving. Grants are given to the local coalitions to support these efforts through saturation patrols and safety checks. These enforcement efforts are conducted in locations where alcohol-related fatalities and other serious collisions occur.

Statistics show alcohol-related fatalities have declined over the past two years as is true throughout the nation. Despite this trend, impaired drivers continue to pose a significant problem for the State. Montana has one of the highest Mileage Death Rates (MDR) in the nation. (The number of deaths per 100 million miles traveled determines the MDR.) The MDR for Montana is 2.05, which is substantially higher than the national rate of 1.48. Additionally, 50 percent of the State's fatalities are alcohol-related, 50 percent are attributed to victims not wearing safety belts. Approximately 90 percent of these fatalities occur in rural settings, and 66 percent involve single vehicle collisions. Pickup trucks are involved in more fatal collisions than automobiles and a significant number of fatal victims, almost 40 percent, were ejected.

Periodic and sustained enforcement and education efforts are carried out throughout specific times of the year. The SHTSO encourages all law enforcement agencies to take part in statewide mobilization initiatives by participating in planned events during the heavily traveled holidays of Christmas/New Year, Memorial Day, Independence Day and Labor Day. The Selective Traffic Enforcement Program (STEP) is recommended for agencies that choose to participate. Additionally, the SHTSO is recommending that all officers who participate in mobilizations must be certified in conducting Standard Field Sobriety Tests (SFSTs). Standardized training in SFSTs is required by the Montana Peace Officers Standards and Training. A train-the-trainer SFST course was recently provided to 18 officers throughout the State in order to reach those officers who have not been certified and to provide refresher training to those whose skills have diminished. Currently, 65 to 85 percent of sworn officers have received this training. The Montana Highway Patrol recertifies its officers in SFSTs every two years and has committed to assist other agencies when needed. A Law Enforcement Liaison (LEL) assigned to the SHTSO could assist with this and other related enforcement activities in order to enhance coordination and encourage participation.

The Montana Department of Justice is responsible for maintaining the Intoxilyzer 5000 breath testing devices throughout the State. These stationary devices are strategically assigned to facilities in most counties and are available to any officers certified to use them. Portable Preliminary Breath Testing devices (PBTs) are not admissible for evidentiary purposes, except in tribal court. Tribal law enforcement officers who appeared before the assessment team stated they would be in favor of using portable evidentiary breath testing devices if made available to

them. In addition to a breath test, officers may also use video recording devices to assist in providing evidence against an impaired driver.

During the 2003 Legislative Session, Montana passed legislation to lower the Blood Alcohol Content (BAC) from .10 to .08, which allows officers to arrest drivers with a lower level of impairment.

Sobriety checkpoints have proven to be an effective tool for law enforcement across the nation in reducing the incidence of impaired driving. Although the federal courts have held sobriety checkpoints to be legal, their use has been discouraged in Montana. All law enforcement officers and members of the judicial branch appearing before the assessment team and others expressed support for sobriety checkpoints as a useful tool in combating impaired driving.

Safety belt use has proven to be the best approach in reducing injuries and the death toll associated with impaired driving. Despite this fact, Montanans have resisted legislation to make safety belt use mandatory. As demonstrated in other states with a primary law, passage of a mandatory belt law alone would automatically increase the State's usage and lower injuries and fatalities. Additionally, law enforcement officers would be more likely to enforce a primary law over a secondary law.

It has been mentioned on several occasions during this assessment that the majority of Montanans do not take the act of drinking and driving seriously. Some referred to juvenile consumption of alcohol as a "rite of passage"; others spoke of the frontier attitude of folks in the West; while others refer to DUI as a joke. Some Montana law enforcement administrators have reevaluated the way they enforce the laws due to political pressure from the communities they serve. Consequences for violating the law must be stringent and prompt.

Today, Montana is home to the 11 Indian tribes that occupy seven reservations: Blackfeet; Crow; Flathead (Confederated Salish and Kootenai Tribes); Ft. Belknap (Assiniboine and Gros Ventre); Ft. Peck (Assiniboine and Sioux); Northern Cheyenne; and Rocky Boy (Chippewa/Cree). These federally-recognized Indian tribes possess a trust relationship with the United States government. Law enforcement on most reservations in Montana is a feature of federal and tribal law, rather than state law. On the Flathead reservation, however, under P.L. 280, the State and tribe share jurisdiction.

States and tribes have the authority to enter into cross-deputization agreements with one another, which are routinely signed as well by cities and counties as political subdivisions of the State.

These agreements generally specify that a tribal or state officer may arrest any person for a crime where they otherwise would have the jurisdiction and that they will hold the person for the other law enforcement entity that actually has jurisdiction to cite the offender. Therefore, if a non-Indian is driving while intoxicated on the reservation, the tribal police may apprehend and detain the offender for release to the custody of the police, sheriff or highway patrol.

Montana tribes have criminal codes and tribal court systems. The police units are either operated by the tribe or the Bureau of Indian Affairs. The laws and court systems vary from tribe to tribe,

meaning that impaired driving is likely to be prosecuted and punished differently on each reservation.

The Salish and Kootenai Tribes have a cross-deputization agreement with the State and its local subdivisions that works well. The Ft. Peck Tribes also have a cross-deputization agreement with the State, which is described as being effective. The Blackfeet Tribe recently signed an agreement with the Montana Highway Patrol that allowed the patrol to open a field office on the reservation.

Other problems include:

1. Jail space on the reservation is reserved for serious offenders and seldom available for DUI detainees as DUI detainees are seldom perceived as serious offenders.
2. Tribal police must cover a vast area with very little in the way of resources or support. Many tribal police do not have radar, computers, video equipment or PBTs. On most of the reservations, officers lack effective radio communications.
3. Tribes have varying needs for training and access to equipment.
4. Due to distance and limited officers in the field, response time on most reservations can frequently be well in excess of 30 minutes.

Recommendations

- ◆ Hire or contract a Law Enforcement Liaison to the SHTSO. (See 1-C: Program Management).
- ◆ Enact Primary Safety Belt legislation.
- ◆ Increase funds for and encourage statewide participation in DUI task forces to support law enforcement efforts.
- ◆ **Provide SFST refresher and recertification training.**
- ◆ Loan equipment to tribal law enforcement agencies for DUI enforcement.
- ◆ Sponsor a summit for tribal leaders to discuss DUI and safety belt use.
- ◆ **Conduct sobriety checkpoints.**
- ◆ Assist tribes and other law enforcement agencies in acquiring and proper utilization of breath testing devices.

3-C: Publicity to Enhance General Deterrence

Advisory

States should publicize impaired driving law enforcement efforts and other elements of the criminal justice system to increase the public perception of the risks of detection, arrest, prosecution, and sentencing for impaired driving. Publicity should be culturally relevant and appropriate to the audience. States should:

- *Focus publicity efforts on creating a perception of risk of detection, arrest, prosecution, and punishment for impaired driving.*
- *Develop and implement a year-round media plan that includes:*
 - * *messages coordinated with National campaigns*
 - * *special emphasis during periods of heightened enforcement and high risk holiday periods (including coverage before and reports of results after)*
 - * *regular (e.g., monthly), sustained coverage throughout the year, using messages (or “media hooks”) that are law enforcement related*
 - * *paid, earned, and donated advertising*
- *Use clear, concise enforcement messages to increase public awareness of enforcement activities and criminal justice messages (e.g., that focus on penalties and direct costs to offenders such as loss of license, towing, fines, court costs, lawyer fees, insurance, etc.).*
- *Monitor and evaluate media efforts to measure public awareness and changes in attitudes and behavior.*

Status

The State of Montana employs a mobilization program to encourage participation in combined enforcement efforts throughout specific holidays. Law enforcement agencies in Montana will participate in the National, “*You Drink & Drive. You Lose.*” impaired driving campaign scheduled for August 19th through September 5, 2005, and the sustained enforcement effort beginning July 1, 2005, through April 30, 2006. According to the State Highway Traffic Safety Office (SHTSO), 21 law enforcement agencies including the Montana Highway Patrol have agreed to support the Selective Traffic Enforcement Program (STEP) impaired driving effort beginning October 1, 2005. These agencies will cover 85 percent of the State’s population with sustained overtime saturation patrols. Each agency will provide information to the SHTSO about the particular special enforcement operation they will conduct on a monthly basis.

The SHTSO contracted with Banik Communications for an impaired driving media campaign that included Public Service announcements on television, radio and outdoor billboards. Radio carried commercials stressing, “If you drink and drive you will be caught, and prosecuted; if you drink and drive you will lose.” Television carried ads on the four major media outlets that stressed the message, “We will enforce.” Outdoor advertising featured a campaign that highlighted the enforcement message, “Photos capture holiday moments – You Drink and Drive You Lose.”

A special campaign was conducted on three reservations using interns who tailored the message that best suited their environment.

Recommendations

- ◆ **Develop and implement a year-round media plan to enhance general deterrence.**
- ◆ Continue working with tribal leaders to develop community awareness campaigns.

3-D: Prosecution

Advisory

Prosecutors who handle impaired driving cases face tough odds. Typically, these prosecutors have the least experience, handle hundreds of cases at a time and receive insufficient training. States should implement a comprehensive program to visibly, aggressively, and effectively prosecute impaired driving cases. States should:

- *Make impaired driving cases a high priority for prosecution and assign these cases to knowledgeable and experienced prosecutors.*
- *Encourage vigorous and consistent prosecution of impaired driving (including youthful offender) cases, particularly when they result in a fatality or injury, under both impaired driving and general criminal statutes.*
- *Provide sufficient resources to prosecute impaired driving cases and develop programs to retain qualified prosecutors.*
- *Employ experienced prosecutors, such as State Traffic Safety Resource Prosecutors, to help coordinate and deliver training and technical assistance to prosecutors handling impaired driving cases throughout the State.*
- *Ensure that prosecutors who handle impaired driving cases receive state-of-the-art training, such as in SFST, DEC, emerging technologies for the detection of alcohol and other drugs; prosecutors should learn about sentencing strategies for offenders who abuse these substances and participate in multi-disciplinary training with law enforcement personnel.*
- *In Driving While Impaired by Drugs (DWID) cases, encourage close cooperation between prosecutors, state toxicologists, and arresting law enforcement officers (including Drug Recognition Experts). Their combined expertise is needed to successfully prosecute these cases.*
- *Establish and adhere to strict policies on plea negotiations and deferrals in impaired driving cases and require that plea negotiations to a lesser offense be made part of the record and count as a prior impaired driving offense.*

Status

The 2001 Montana Impaired Driving Assessment contained a total of seven prosecution recommendations, three of which were priority recommendations. The most recent response to these recommendations indicates that none of them have been implemented. The reasons for the lack of implementation range from no reason, to lack of public support, and lack of funding.

One issue which appears to be at the heart of Montana's inability to implement the 2001 prosecution recommendations is the composition of the State's prosecutorial population. As noted in the 2001 assessment, two separate groups of officials administer the prosecution of Driving under the Influence (DUI) cases. County attorneys primarily prosecute felony DUI offenses and alcohol-related vehicular homicide cases. City attorneys predominantly prosecute misdemeanor DUI cases; although in some jurisdictions county attorneys prosecute DUIs under an agreement with the city attorney's office. Although City and County attorneys share many of the same duties in prosecuting misdemeanor DUI cases, they do not partake of the same educational opportunities.

Felony and misdemeanor DUI cases present legal and evidentiary issues that are similar. They include the admissibility of evidence such as: pre and post arrest breath and blood tests, statements and confessions, prior convictions, field sobriety test results, and the opinions of both expert and lay witnesses. DUI education concerning these issues is a routine part of the curriculum for County attorneys. While County attorneys attend continuing education programs twice a year, City attorneys generally do not, although they are invited to the County attorney sponsored programs. There are no prosecution-oriented continuing education programs targeted to City attorneys. Because City attorneys seldom share in the education opportunities available to County attorneys, the quality of City attorney advocacy in DUI cases is diminished

Some states provide their prosecutors with a full time DUI staff attorney/coordinator for training and networking. The function of this individual is to coordinate training as well as to assist jurisdictions throughout a state in the prosecution of DUI cases by providing information and trial assistance. Such a DUI prosecutor coordinator would be of particular assistance in those cases involving death, serious bodily injury, and complex legal and evidentiary issues. Montana does not have such a statewide prosecution resource officer specifically for DUI prosecution.

Local district or county jurisdictions in some states have implemented DUI community management conferences with quarterly meetings. Such management systems often take the form of DUI task forces. They may be comprised of stakeholders including representatives of law enforcement, clerks, judges, prosecutors, the defense bar, and representatives of probation, treatment and safety coalitions. The purpose of such meetings is to discuss issues that the various stakeholders have with respect to the enforcement, prosecution, defense and adjudication of impaired driving cases in general. Such meetings are often able to resolve issues, involving discovery, bail, evidence admissibility, and scheduling that can improve prevention and the delivery of justice in DUI as well as other criminal cases. In 2003, funding for drinking and driving programs has revived implementation opportunities for DUI task force activities. A driver's license that has been suspended or revoked for DUI or a Per Se offense must now remain suspended or revoked until the driver has paid to the department a fee of \$200 in addition to other fines and penalties. One-half of these fees are deposited in a special revenue account to be used for funding DUI Task Forces. At present there are some 14 task forces in operation in 17 counties. Montana has the potential to establish and fund additional DUI task forces.

Refusal to submit to breath testing is widespread in Montana. It is estimated that Montana's refusal rate averages between 35 and 45 percent. Refusals frustrate and complicate the prosecution of impaired driving cases as they deprive prosecutors of the ability to prove impairment through use of blood alcohol concentration evidence. At present there are no significantly enhanced suspension penalties or separate criminal penalties for failure to provide a breath sample. States that have enacted enhanced sanctions or criminal penalties for refusal report a lower percentage of refusals. In some Montana jurisdictions prosecutors engage in plea bargaining that results in the avoidance of the suspension penalties for defendants who have refused to comply with the implied consent law.

Pursuant to Montana statute 61-8-402(8) the Department of Justice Bureau of Records and Driver Control (Driver Control) may recognize the seizure of a license of a tribal member by a peace officer acting under the authority of a tribal government or an order issued by a tribal court

suspending, revoking, or reinstating a license or adjudicating a license seizure if the actions are conducted pursuant to tribal law or regulation requiring alcohol or drug testing of motor vehicle operators and the conduct giving rise to the actions occurred within the exterior boundaries of a federally recognized Indian reservation in this State. Action by the department under this subsection is not reviewable. Prosecutors who function in tribal courts can utilize this provision so as to insure equality in the treatment of tribal members.

There is evidence of rampant and pervasive charge reduction in many Montana jurisdictions. The practice involves prosecutors allowing charges of DUI or Per Se violations to be reduced to reckless or careless driving, negligent endangerment, or other offenses in return for convictions that do not reflect alcohol involvement. This has resulted in an estimated conviction rate of less than 70 percent for cases in which DUI or Per Se violations were initially charged. Some states do not permit charge reduction of DUI or Per Se offenses where the defendant's blood alcohol level is twice the legal limit. In those states where charge reduction is permitted in lower blood alcohol level cases, prosecutors are routinely required to state upon the record or file with the court the reasons supporting such a decision. In states where charge reduction is practiced it is often coupled with statutory requirements that the defendant who pleads to a reduced charge must, nevertheless, complete an alcohol education program, evaluation, and treatment where indicated.

Some states specifically prohibit the suspension, withholding, or deferral of the sentence or adjudication of guilt where the defendant has entered a plea to an impaired driving offense. In Montana, this prohibition is not specifically contained in the DUI or Per Se statutes. It is contained in a sub-statute, however. Further, there is no judicial sanction for use of diversion programs in DUI or Per Se cases.

There is evidence that significant numbers of pleas to DUI or Per Se offenses are taken by judges outside of the presence of a prosecuting attorney and without the judge having a printout of the defendant's conviction record for motor vehicle offenses.

A unique feature of Montana's judicial system is the constitutionally created right to appeal. When exercised by a defendant convicted in a lower jurisdiction court, the right provides for a new evidentiary trial (trial de novo) in the District Court. This procedure is available to obtain jury as well as non jury de novo trials. The majority of other states provide for appeals on the merits in which an appellate court would review the record of the lower court and determine if reversal was warranted based on the issues raised and the evidence presented in the lower court proceeding. The right to trial de novo in essence provides unsuccessful defendants with "two bites at the apple." It is generally regarded as an inefficient system that is wasteful of both judicial and prosecutorial effort.

There is confusion and speculation concerning the legality of using sobriety checkpoints to interdict impaired driving. The use of such checkpoints is well suited to enforcement of Montana's DUI laws. Prosecutors generally believe that the appropriate operation of such checkpoints will pass constitutional muster. Prosecutors are in a unique position to inform law enforcement how to legally implement and operate such checkpoints.

Native American Prosecution Practices

Six of the seven Montana Indian reservations are organized in accordance with the traditional model within Federal Indian Law, as amended in recent years by federal statutes and case law. On these reservations, the tribal governments exercise criminal jurisdiction throughout the reservation as an aspect of their inherent sovereignty. They have the power to criminally prosecute tribal members or nonmember Indians using tribal criminal codes. Under the 1978 U.S. Supreme Court case of *Oliphant v. Suquamish Tribe*, they are divested of the power to criminally prosecute non-Indians. Tribes have exclusive jurisdiction over misdemeanor crimes, including DUI, committed by Indians on the reservation. However, they often do not have the resources to prosecute misdemeanors, including domestic violence and most alcohol-related offenses.

States and tribes have the authority to enter into cross-deputization agreements that are routinely signed as well by cities and counties as political subdivisions of the State. These agreements generally specify that a tribal or state officer may arrest any person for a crime where they otherwise would have jurisdiction, and that they will hold the person for the other law enforcement entity that actually has jurisdiction to cite the offender. Therefore, if a non-Indian is DUI on the reservation, the tribal police may apprehend and hold the offender for prosecution.

All of these tribes have criminal codes and tribal court systems. The police units are either operated by the tribe or operated by the Bureau of Indian Affairs. The laws and court systems will vary from tribe to tribe, meaning that impaired driving is likely to be prosecuted and punished differently on each reservation.

The Confederated Salish and Kootenai Tribes of the Flathead Reservation are the only Montana tribes that are organized under P.L. 280, which is a federal statute that was passed in the 1950s and amended in the 1960s to allow certain states to assume civil and/or criminal adjudicatory jurisdiction on reservations with tribal consent. P.L. 280 does not authorize any form of state regulatory authority on the reservation. It allows states to adjudicate cases arising on the reservation.

The Salish and Kootenai Tribes have exclusive jurisdiction over all misdemeanors involving Indians. The State and the Tribe exercise concurrent jurisdiction over felonies. With respect to impaired driving, this means that the Salish and Kootenai Tribes routinely prosecutes DUIs, but can send felony DUIs to the County Attorney for prosecution. This enables more severe penalties for defendants. As a result of this hybrid system, the Salish and Kootenai Tribes are currently the only Montana tribes that use the State's traffic code in its entirety and report case dispositions to the Montana Driver Control.

Recommendations

- ◆ **Encourage all tribal courts to adopt uniform traffic safety codes that incorporate provisions of the Montana statutes governing DUI, Per Se violations, and the suspension of driving privileges upon conviction or for refusal to comply with the Montana implied consent law.**

- ◆ Encourage all tribal courts prosecutors to report all traffic convictions and case dispositions to the Montana Department of Justice, Bureau of Records and Driver Control.
- ◆ Encourage tribal court prosecutors who prosecute DUI and Per Se offenses to attend continuing legal education and training programs offered through the Montana County Prosecuting Attorneys Association.
- ◆ Enact legislation increasing license suspension penalties for initial as well as repeated refusals to comply with Montana's implied consent law.
- ◆ Enact statutory provisions requiring revocation of license or driving privileges for five years upon conviction of a fourth or subsequent DUI or Per Se violation.
- ◆ Incorporate statutory provisions that prohibit the withholding, deferment, or suspension of the adjudication of guilt, sentence or the imposition of sentence upon any defendant who pleads guilty, no contest, or who is convicted after trial of DUI or a Per Se offense.
- ◆ Incorporate statutory provisions in Montana's DUI and Per Se statutes specifically prohibiting the diversion of such prosecutions so as to prevent the dismissal or withholding of judgment or adjudication upon the completion of certain conditions specified by courts or prosecuting authorities.
- ◆ Encourage all prosecutors to participate in DUI task forces.
- ◆ Appoint a full-time DUI Traffic Safety Resource Prosecutor in the Attorney General's Office to function as a TRSP.
- ◆ Investigate all jurisdictions to determine and report the frequency and extent to which DUI and Per Se charged defendants are being allowed to plead to non-alcohol-related traffic offenses or are being allowed to participate in diversion programs that result in dismissal or reduction of DUI or Per Se offenses.
- ◆ Investigate all jurisdictions to determine and report the frequency and extent to which license suspension sanctions are being nullified through plea bargaining for DUI defendants, who have been cited for refusal to comply with the implied consent law.
- ◆ **Require, through statute or rule of court procedure, that a prosecutor shall be present at all proceedings in which pleas of guilty or no contest are entered to DUI or Per Se violations and that such prosecutor provide information to the court concerning defendant's conviction record prior to imposition of sentence.**
- ◆ Urge the Montana legislature to provide for a referendum to allow the citizens to amend the state constitution to abolish the right to appeal through use of a trial de novo.

- ◆ Require those City attorneys who prosecute DUI and Per Se offenses to participate in annual county prosecutor sponsored continuing education and training programs that emphasize the effective prosecution of DUI and Per Se offenses.
- ◆ Provide prosecutorial assistance and advice to local law enforcement authorities concerning the legality, implementation and operation of sobriety check points in their jurisdictions.

3-E: Adjudication

Advisory

The effectiveness of enforcement and prosecution efforts is strengthened by knowledgeable, impartial, and effective adjudication. The imposition of effective, appropriate, research-based sanctions, followed by close supervision, and the threat of harsher consequences for non-compliance, provides an opportunity to reduce recidivism, which is high among impaired drivers. States should:

- *Involve the State's highest court in taking a leadership role and engaging judges in effectively adjudicating impaired driving cases and ensuring that these cases are assigned to knowledgeable and experienced judges.*
- *Encourage consistency in the adjudication of impaired driving (including youthful offender) cases, and the imposition of effective and appropriate sanctions, particularly when impaired driving resulted in a fatality or injury.*
- *Provide sufficient resources to adjudicate impaired driving cases in a timely manner and effectively manage dockets brought before judges.*
- *Ensure that judges who handle criminal or administrative impaired driving cases receive state-of-the-art education, such as in technical evidence presented in impaired driving cases, including SFST and DEC testimony, emerging technologies for the detection of alcohol and other drugs, and sentencing strategies for offenders who abuse these substances.*
- *Use court strategies to reduce recidivism through effective sentencing and close monitoring, by either establishing DWI courts, encouraging drug courts to hear impaired driving cases, or encouraging other courts to adopt DWI/Drug court practices; these courts increase the use of drug or alcohol assessments, identify offenders with alcohol or drug use problems, apply effective and appropriate sentences to these offenders, including abstinence from alcohol and other drugs and closely monitor compliance, leading to a reduction in recidivism.*
- *Provide adequate staffing of probation programs with the necessary resources, including technological resources, to monitor and guide offender behavior.*

Status

Montana's judicial system consists of a Supreme Court, District Courts, and courts of limited jurisdiction. The Supreme Court is the only appellate court, although the District Courts may hear appeals from the limited jurisdiction courts in the form of "trial de novo." District Courts exercise general jurisdiction and juvenile court jurisdiction. There are 22 judicial districts with 42 elected judges serving in 56 District Courts. There are 66 Justice of the Peace (JP) courts, and 81 City and 5 Municipal courts. 162 judges serve in the limited jurisdiction courts. All judges are elected. Of the 162 limited jurisdiction court judges, the majority are laypersons who do not possess a law degree. Many of the limited jurisdiction court judges are part-time judicial employees.

Montana's lower tier trial court structure is antiquated in comparison to other states that have adopted unified court systems in which all judges hold law degrees and in which the courts are governed by an administrative office of the courts under the auspices of the State Supreme Court.

Montana's court structure is not unusual for a geographically expansive with a widespread rural population. The lower tier trial courts, in which the majority of misdemeanor DUI cases are tried, are not courts of record. As a result, defendants, adjudicated guilty after a trial, are entitled to a "trial de novo" in the District Court. Such trials de novo are, in essence, a second bite at the apple for defendants who were initially found guilty. They provide a complete retrial in the District Court of the same matter that was tried in the lower tier trial court. Restructuring a court system is no easy proposition. Insuring that all courts are courts of record usually requires the abolition of city, municipal, and justice of the peace courts, replacing them with courts of record that function under the auspices of the State Supreme Court. Court restructuring and the abolition of the right to trial de novo in Montana would require amendment of the State Constitution and approval by the electorate. Such change, while beneficial to the delivery of justice, is not easily accomplished.

Montana limited jurisdiction courts generally do not have probation departments to supervise DUI defendants who have been ordered to conform to certain standards of conduct such as abstinence, making restitution, completion of treatment, and installation and use of ignition interlock systems. In the absence of probation authorities, limited jurisdiction judges are compelled to either overlook noncompliance or to utilize contempt proceedings to insure and coerce compliance with their sentencing orders. Other states' courts systems, that do not have resources to support their own probation departments, have turned to private probation authorities to fulfill their supervision needs. Non-profit entities such as the Salvation Army have provided comprehensive probation services in many jurisdictions that are not served by state operated probation departments. Such service is usually provided without cost to the court system that utilizes it. Use of non-profit entities such as the Salvation Army Correctional Service most likely require enabling legislation.

Montana provides continuing judicial education for its limited jurisdiction court judges. Earlier in 2005, a comprehensive 3-day education conference provided almost two full days of DUI-related education. The conference also featured separate breakout sessions for city, JP, and municipal court judges. Native American tribal court judges are invited to participate in such conferences but seldom do.

Given the non-record status of all Montana's limited jurisdiction courts, in order to utilize non-felony convictions for future enhancement purposes, it is essential that tangible record of defendants' guilty or no contest pleas be properly documented and preserved. Such documentation can be accomplished through the use of written plea forms containing comprehensive rights waivers including, where applicable, waivers of the right to counsel. The use of written waiver forms, containing a defendant's signature and fingerprint(s), is a recognized means of preserving conviction status for future enhancement of penalties in the event that the defendant commits additional impaired driving offenses in Montana or other jurisdictions.

Many judges accept pleas of guilty or no contest from DUI defendants without being informed as to the defendant's prior conviction record. It is not uncommon for a judge to accept a defendant's plea outside of the presence of a prosecutor and without having access to a printout of the defendant's traffic conviction record. This practice is in part attributable to a lack of concern by judges regarding the defendant's past record and in part to the lack of efficient electronic access

to license transcripts from the Department of Justice, Records and Driver Control Bureau (Driver Control).

There is evidence of widespread and pervasive plea bargaining that results in reduction of DUI and Per Se offenses to reckless or careless driving, negligent endangerment, and other less serious moving offenses. There is evidence of judicial use of diversion programs in which defendants' DUI charges are dismissed if they successfully complete certain court-imposed conditions and do not commit violations during a given period of time. There is also evidence of limited jurisdiction court judges condoning plea negotiations that contemplate that the prosecution will not oppose the dismissal of administrative license revocation dispositions in the cases of defendants who have refused an approved breath test.

If limited jurisdiction courts were upgraded to courts of record, the foundation could be laid for abolishing the wasteful and antiquated right to trial de novo. Support by limited jurisdiction court judges to effect reorganization of their courts could provide an impetus to the State Supreme Court and the Legislature to undertake efforts to amend the Montana constitution and create a unified court system.

The disposition of license suspension and implied consent refusal matters can be expedited through the adoption of an administrative license revocation (ALR) procedure.

The quality of justice in DUI cases can be improved through judicial participation in multidisciplinary DUI task forces which include, at a minimum, representatives from defense bar as well as prosecution, law enforcement and community safety coalitions. Judges can participate in such programs within the bounds of ethical conduct, provided that they are careful not to discuss specific cases pending before them and do not form or express opinions that would suggest that their ability to remain impartial has been compromised.

Native American Adjudication Practices

The laws, court systems, and judicial practices differ markedly in the various tribes that are situated on the reservations in Montana. Accordingly, impaired driving is likely to be prosecuted and punished differently on each reservation. All Montana tribes have traffic safety codes except for the Northern Cheyenne Tribe. The Salish and Kootenai Tribes use the state traffic safety code. The other tribes have their own laws, which may be different from state laws. Sentencing modalities for DUI and Per Se offenses vary widely. Tribal representatives from one reservation described the penalty for DUI as a fine of \$180 and 5 days in jail. There are many repeat offenders on this reservation. On another reservation, tribal representatives described the base penalty for DUI as 2 days in jail and a \$150 fine which can be increased to 4 days in jail or a \$250 fine. Some tribal court judges are not law trained.

Many tribal courts and their judges do not report DUI case dispositions to Driver Control. As a result, Driver Control records may not contain documentation of tribal DUI defendants who have been convicted of multiple DUI offenses in tribal courts. There is no concerted reporting of license suspensions or implied consent refusals. Accordingly, Driver Control may fail to impose applicable suspension or revocation of driving privileges. Tribal court judges seldom have records from which to discern the prior conviction status of defendants who appear before them.

Recommendations

- ◆ Encourage all tribal courts to adopt uniform traffic safety codes that incorporate relevant provisions of the Montana statutes governing DUI, Per Se violations, and the suspension of driving privileges upon conviction or for refusal to comply with the Montana implied consent law.
- ◆ Encourage all tribal court judges to order chemical dependency assessments and treatment if recommended for all defendants adjudicated in tribal courts to be guilty of the offenses of DUI or Per Se violations.
- ◆ **Encourage all tribal courts and their judges to report all traffic convictions and case dispositions to Driver Control.**
- ◆ Invite all tribal court judges to attend and participate in all available continuing judicial education programs.
- ◆ Require, through statute or rule of court procedure, that a prosecutor shall be present at all proceedings in which pleas of guilty or no contest are entered to DUI or Per Se violations and that judges obtain, review, and utilize the defendant's conviction record for sentencing purposes.
- ◆ Support legislative efforts to provide for a referendum to allow the citizens to amend the state constitution to abolish the right to appeal through use of a trial de novo.
- ◆ Support legislative efforts to upgrade Montana's lower tier trial court judicial system to a unified state trial court system in which all lower tier trial courts become courts of record.
- ◆ Require judges to abstain from withholding, deferring, or suspending the adjudication of guilt, sentence or the imposition of sentence upon any defendant who pleads guilty, no contest, or who is convicted after trial of DUI or a Per Se offense.
- ◆ Require judges to abstain from utilizing diversion programs that result in DUI or Per Se offenses being dismissed upon completion of the diversion program.
- ◆ **Require judges to decline to accept plea negotiations that include prosecutorial commitments to effect the disposition of implied consent refusal proceedings in favor of a defendant.**
- ◆ Establish and promote private or quasi public probation services for use in the misdemeanor DUI and Per Se cases to supervise defendants to insure their compliance with sentence provisions.
- ◆ Encourage judicial participation in DUI task forces.
- ◆ Implement and utilize a statewide court information reporting and retrieval system.

- ◆ Require judges, in the plea taking process, to utilize and record written waivers of essential Constitutional rights to ensure that all such waiver forms are executed with the signature and a fingerprint impression of the defendant.

3-F: ADMINISTRATIVE SANCTIONS AND DRIVER LICENSING PROGRAMS

Administrative sanctions, including the suspension or revocation of an offender's driver's license; the impoundment, immobilization, or forfeiture of a vehicle; the impoundment of a license plate, or the use of ignition interlock devices, are among the most effective actions that can be taken to prevent repeat impaired driving offenses. In addition, other driver licensing activities can be effective in preventing, deterring, and monitoring impaired driving, particularly among novice drivers.

3-F-1: Administrative License Revocation and Vehicle Sanction

Advisory

Each State's Motor Vehicle Code should authorize the imposition of administrative penalties by the driver-licensing agency upon arrest for violation of the State's impaired driving laws. The statute should provide for:

- *Administrative suspension of the driver's license for alcohol and/or drug test failure or refusal.*
- *The period of suspension for a test refusal should be longer than for a test failure.*
- *Prompt suspension of the driver's license (within 30 days of arrest), which should not be delayed, except when necessary, upon request of the State.*
- *Vehicle sanctions, including impoundment of or markings on the license plate, or impoundment, immobilization or forfeiture of the vehicle(s), of repeat offenders and individuals who have driven with a license suspended or revoked for impaired driving.*
- *Installation of ignition interlocks on the offender's vehicle(s) until a qualified professional has determined that the licensee is their alcohol and/or drug use problem will not interfere with their safe operation of a motor vehicle.*

Status

The State of Montana 2001 Impaired Driving Assessment recommended that a multi-agency stakeholder group study the feasibility and benefits of adopting an Administrative License Revocation program. To date, the state motor vehicle code has not been amended to authorize administrative penalties at the time of an arrest for violation of impaired driving laws, except for those pertaining to Commercial Driver's Licenses (CDL). In addition to permitting the licensing agency to suspend or revoke the license of anyone who refuses a blood alcohol concentration (BAC) test, an ALR would typically include other sanctions, such as a longer period of suspension for anyone refusing a test.

The Department of Justice, Bureau of Records and Driver Control (Driver Control) may suspend the license of a driver who refuses a BAC test, but the suspension period is less than it would be under a first-offense DUI conviction. This situation no longer applies to a second test refusal because the State Legislature raised the penalties for DUI driving when a driver is under license suspension or revocation for a previous DUI conviction or BAC test refusal. However, the period of suspension imposed for test refusal remains less severe in general. A more lengthy suspension

for BAC test refusal is widely endorsed nationally, but a bill introduced in Montana to address the BAC refusal issue was not passed during the 2005 legislative session. License suspension actions are usually taken promptly by Driver Control. Probationary licenses are allowed for first-offense impaired driving, but not for subsequent offenses.

Vehicle sanctions may be imposed for repeat offenders. These can include impoundment, immobilization for a period, or vehicle forfeiture. A vehicle may be subject to forfeiture following a second offense, and a person who is convicted of driving while suspended for an earlier impaired driving conviction is subject to vehicle seizure.

Alcohol ignition interlock devices (AIID) may be prescribed for DUI first offenses. AIID may be allowed or directed for repeat impaired driving offenders in lieu of vehicle forfeiture or immobilization.

Recommendations

- ◆ Enact legislation to increase the license suspension penalty for BAC test refusal. Penalty for refusal should exceed that imposed for BAC conviction.
- ◆ Adopt and implement a comprehensive ALR program.
- ◆ Impose a 30-day “hard” suspension for all first-time DUI offenders, which is suspension of all driving privileges with no restricted or probationary license.

3-F-2: Programs

Advisory

Each State's driver licensing agency should conduct programs that reinforce and complement the State's overall program to deter and prevent impaired driving, including:

- *Graduated Driver Licensing (GDL) for novice drivers that includes three distinct licensing phases for young novice drivers (learner's permit, restricted license and unrestricted license) and provides that:*
 - * *Requires a learner's permit for a minimum of 6 months and a total combined period of one year prior to being eligible for an unrestricted license*
 - * *Requires that drivers practice driving with parental or adult supervision for a minimum number of hours and demonstrate safe driving practices before they may drive unaccompanied by a parent or adult*
 - * *Requires a nighttime driving restriction and limits on the number of young passengers who may be in the vehicle during phase two*
 - * *Provides that the permit, the restricted and the unrestricted license, as well as licenses to drivers under and over the age of 21, are easily distinguishable*
 - * *Provides for license suspension for drivers under age 21 who drive with a BAC exceeding the limit set by the State's zero tolerance law*
 - * *Provides for primary enforcement of safety belt use laws for young novice drivers*
- *A public information program that describes alcohol's effects on driving and the consequences of being caught driving impaired or above the State's zero tolerance limit.*
- *A program to prevent individuals from obtaining and using a fraudulently obtained or altered driver's license including:*
 - * *Training for alcoholic beverage sellers to recognize fraudulent or altered licenses and IDs and what to do with these documents and the individuals attempting to use them*
 - * *Training for license examiners to recognize fraudulent documents and individuals seeking to fraudulently apply for them*

Status

A program for Graduated Driver Licensing (GDL) was enacted into law during the 2005 Session of the Montana State Legislature. The law provides for three distinct licensing phases for young drivers under the age of 18. The three license phases are: (1) learner's license or instruction permit (6 months); (2) restricted license (6 months); and (3) unrestricted license. A driver is eligible for a full or unrestricted license at age 18 or after one year of experience under the restricted license—whichever comes first.

Additionally, the law provides that the licensee pass a roads test or skills test, and has had at least 50 hours of driving experience (10 at night) under the supervision of an authorized person at least 18 years of age. The applicant must also certify that he or she has not been convicted of or received a citation for a traffic violation or alcohol or drug offense. With specific exceptions, nighttime driving between 11:00 p.m. and 5:00 a.m. is limited, and limits are also imposed on the number of young passengers allowed in the vehicle.

The GDL program provides that the restricted license be clearly marked and include a notation conveying the restrictions that apply. Unrestricted licenses issued to drivers under the age of 21 are also easily distinguished by a color-coded bar. In Montana there is a .02 blood alcohol limit for drivers under 21. Fines and license suspensions are available in the case of conviction or for refusal of a BAC test, and a probationary license cannot be obtained when a BAC test is refused. Probationary licenses may be available after a period of time if a test is administered and a conviction results.

The Montana Department of Transportation and the State Highway Traffic Safety Office (SHTSO) sponsors an information program that includes brochures, handbooks and an extensive media outreach effort. Several publications as well as media programming specifically address the youthful driver audience and explain in detail both the effects of alcohol on driving ability and the legal consequences and penalties for violating the zero tolerance limit.

Montana does not have a primary safety belt law.

The State takes measures to prevent the issuance of fraudulent licenses and recognize fraudulent documentation submitted in application for a driver's license. The SHTSO sponsors training for alcoholic beverage sellers on the detection of document fraud. It accomplishes this mainly through grant-aided programs for such training conducted by community-based organizations. License examiners in the Records and Driver Control Bureau of the Motor Vehicle Division are well trained to recognize fraudulent license application documents.

Recommendations.

- ◆ Implement, as part of a comprehensive public information and education program, a program to educate novice drivers on alcohol's effects on driving and the consequences of driving impaired.
- ◆ Design and implement a comprehensive evaluation of the GDL to determine its effect on crashes and conditions that involve young drivers.

3-F-3: Information and Records System

Advisory

Each State's driver licensing agency should maintain a system of records that enables the State to: (1) identify problem drinking drivers; (2) maintain a complete driving history of problem drivers; (3) receive timely and accurate arrest and conviction data from law enforcement agencies and the courts, including data on operators as prescribed by the commercial driver licensing (CDL) regulations; and (4) provide timely and accurate driver history records to law enforcement and the courts. The record system should:

- *Include communication protocols that permit real-time linkage and exchange of data between law enforcement, the courts, the State driver licensing and vehicle registration authorities, and other parties with a need for this information.*
- *Provide enforcement officers with immediate on-the-road access to an individual's licensing status and driving record.*
- *Provide immediate and up-to-date driving records for use by the courts when adjudicating and sentencing drivers convicted of impaired driving.*
- *Provide for timely entry of any administrative or judicially imposed license action and the electronic retrieval of conviction records from the courts.*
- *Provide for effective exchange of data with State, local, tribal and military agencies, and with other governmental or sovereign entities.*

Status

The driver file is maintained by the Records and Driver Control Bureau (Driver Control) of the Motor Vehicle Division of the Montana Department of Justice. This file includes 450,000 active driver licenses. The driver licensing system was thoroughly reviewed in the Traffic Records Assessment of April 19-23, 2004, although not specifically in relationship to the impaired driving program. However, for the purposes of this assessment, several of the observations and recommendations were drawn from that report, and those will be so noted.

Subsequent to the previous traffic records and impaired driving assessments, the State has moved forward on a computerized system which is expected to address many of the recommendations from those assessments. This system is expected to come online for arrests as of September 30, 2005. This system will provide an opportunity for the courts to send and Driver Control to receive electronic reports. This improvement will address the need to provide timely and accurate driver history records to law enforcement and the courts.

Law enforcement agencies have online access to computerized driver license records and have in-vehicle access if the vehicle is equipped with a mobile data terminal. It was reported that the use of mobile data terminals is increasing, although they are not in use statewide and there are reported problems with connecting to the microwave backbone. It is not clear as to whether tribal law enforcement has the same level of access to these records as other agencies in the State. There is currently insufficient sharing of information on driver license history among the state, local, and tribal agencies, partly due to the tribal concern regarding the sharing of individual information.

There is an added problem of many drivers proceeding to drive without a valid license; however, this issue is beyond the purview of an automated driver licensing system and would need to be addressed by increasing penalties for driving without a license.

All state courts are required to post disposition with Driver Control five days after decision. The courts have been responsive to the Assistant Attorney General (AG) when the assistant AG has provided some oversight regarding timely reporting with that court.

From the previous traffic safety records assessment, “The upgraded data system, if totally perfect, will not address all of the deficiencies of the driver system, however. A detailed [commercial driver license] CDL Compliance Review was completed in August 2003 which identified 29 program improvements required and contains 23 pages of project descriptions with target dates for corrections to be completed and provision to enter the actual dates when each correction has been completed. These problem areas apply to CDLs only and reflect the overall problems notwithstanding the less stringent requirements for non-CDL drivers. It is important to reiterate: the driver data managers are aware of the deficiencies and are engaged in the plans for their correction although the non-CDL records do not have the rigorous disciplines applied to them as the CDL records do, they should generally mirror the CDL processes.” In addition, “The driver file is not linked with the vehicle file. It produces abstracts for court and enforcement inquiries. Within the constraints of the State’s Driver Privacy Protection Act (DPPA), the driver file serves authorized users.” There was no indication as to whether or not upgrades to the system would include linkage between the driver and vehicle files.

Recommendations

- ◆ **“Coordinate plans for upgrading the driver license system with those components of a comprehensive statewide traffic records system,” as included in the previous Traffic Records Assessment.**
- ◆ Assure that the driving record and motor vehicle registration files are able to share data electronically.
- ◆ Continue efforts to work with state, local and tribal law enforcement agencies to update their vehicles with the latest computer technology.
- ◆ Encourage the oversight of the Office of Attorney General in the administration of record system improvement.
- ◆ Continue to address the deficiencies in the driver file related to commercial driver licenses.

IV: ALCOHOL AND OTHER DRUG MISUSE: Screening, Assessment, Treatment, and Rehabilitation

Impaired driving frequently is a symptom of the larger problem of alcohol or other drug misuse. Many first-time impaired driving offenders and most repeat offenders have alcohol or other drug abuse or dependency problems. Without appropriate assessment and treatment, these offenders are more likely to repeat their crime. One-third of impaired driving arrests each year involve repeat offenders. Moreover, individuals with alcohol or other drug abuse or dependency problems drive many times before they are arrested. Research has indicated that, on average, such individuals drive several hundred times within two hours of drinking before they are arrested for driving while impaired.

In addition, alcohol use leads to other injuries and health care problems. Almost one in six vehicular crash victims treated in emergency departments are alcohol positive, and one third or more of crash victims admitted to trauma centers - those with the most serious injuries - test positive for alcohol. In addition, studies report that 24-31 percent of all emergency department patients screen positive for alcohol use problems. Their frequent visits to emergency departments present an opportunity for intervention, which might prevent these individuals from being arrested or involved in a motor vehicle crash, and result in decreased alcohol consumption and improved health.

Employers, educators, and health care professionals in every State should have a system in place to identify, intervene, and refer drivers for appropriate substance abuse treatment to change their dangerous behavior.

4-A: Screening and Assessment

Employers, educators, and health care professionals in every State should have a systematic program to screen and/or assess drivers to determine whether they have an alcohol or drug abuse problem and, as appropriate, briefly intervene or refer them for appropriate treatment.

4-A-1: Criminal Justice System

Advisory

People who have been convicted of an impaired driving offense should be assessed to determine whether they have an alcohol or drug abuse problem and their need for treatment. The assessment should be:

- *Conducted by a licensed counselor or other professional holding a special certification in alcohol or other drug treatment.*
- *Used to decide whether a treatment and rehabilitation program should be part of the sanctions imposed and what type of treatment would be most appropriate.*

- *Based on standardized assessment criteria, including standard psychometric instruments, historical information (e.g., prior alcohol or drug-related arrests or convictions), and structured clinical interviews.*
- *Appropriate for the offender's age and culture (e.g., use specialized assessment instruments tailored to and validated for youth or multi-cultural groups).*

Status

Montana Statute 61-8-732

A defendant convicted of a violation of DUI or a Per Se violation is required to complete:

1. A chemical dependency assessment;
2. A chemical dependency education course; and
3. Chemical dependency treatment on a second or subsequent conviction.

The sentencing judge may, in the judge's discretion, require the defendant to complete the chemical dependency assessment prior to sentencing the defendant. If the assessment is not ordered or completed before sentencing, the judge shall order the chemical dependency assessment as part of the sentence.

The chemical dependency assessment and the chemical dependency education course must be completed at a treatment program approved by the Department of Public Health and Human Services (DPHHS) and must be conducted by a licensed addiction counselor. As long as treatment services are provided by a licensed addiction counselor, the defendant may attend a treatment program of the defendant's choice. The defendant must pay the cost of the assessment, the education course, and chemical dependency treatment. The assessment must describe the defendant's level of addiction, if any, and contain a recommendation as to education, treatment, or both. A defendant who disagrees with the initial assessment may, at the defendant's cost, obtain a second assessment provided by a licensed addiction counselor or a program approved by the DPHHS.

The treatment provided to the defendant at a treatment program must be at a level appropriate to the defendant's alcohol or drug problem, or both, as determined by a licensed addiction counselor pursuant to diagnosis and patient placement rules adopted by the DPHHS. Upon determination, the court shall order the defendant's appropriate level of treatment. If more than one counselor makes a determination, the court shall order an appropriate level of treatment based upon the determination of one of the counselors.

Each counselor providing education or treatment shall, at the commencement of the education or treatment, notify the court that the defendant has been enrolled in a chemical dependency education course or treatment program. If the defendant fails to attend the education course or treatment program, the counselor shall notify the court of the failure.

A court or counselor may not require attendance at a self-help program other than at an "open meeting," as that term is defined by the self-help program. A defendant may voluntarily participate in self-help programs.

Dependency treatment must be ordered for a first-time offender convicted of a violation of DUI or a Per Se violation upon a finding of chemical dependency made by a licensed addiction counselor pursuant to diagnosis and patient placement rules adopted by the DPHHS. On a second or subsequent conviction, the treatment program must be followed by monthly monitoring for a period of at least 1 year from the date of admission to the program.

If a defendant fails to comply with the monitoring program imposed, the court must revoke the suspended sentence, if any, impose any remaining portion of the suspended sentence, and may include additional monthly monitoring for up to an additional one year. Whenever a judge suspends a sentence imposed for a first through third offense and orders the person to complete chemical dependency treatment, the judge retains jurisdiction to impose any suspended sentence for up to one year.

Penalties for fourth or subsequent offenses include commitment to the Department of Corrections for a minimum term of 13 months. Following commitment the court is required to order that, if the person successfully completes a residential alcohol treatment program operated by the Department of Corrections, the remainder of the 13 month sentence can then be served on probation. Any additional sentence, up to five years, must be suspended to run concurrent with the probation. This statutory scheme does not insure that the convicted fourth-time offender continue with treatment or remain abstinent during the remaining portion of the probated or suspended sentence.

If a fourth offender commits a fifth offense and they had previously been placed in a residential alcohol treatment program, the offender may be sentenced to not less than 13 months or more than 5 years. Alternatively, the fifth time offender need not be sentenced to any period of confinement, but may instead be sentenced to pay a fine of not less than \$1,000 nor more than \$10,000. Accordingly a fifth time offender could be released without any incarcerative sentence and without any requirement of continued supervision to insure abstinence or require addiction treatment.

Treatment is not mandatory for a first offense DUI. The penalty requires treatment at an appropriate level upon a finding of chemical dependency by a certified chemical dependency counselor. The judge may proceed with a contempt citation or revocation of suspended sentence if the court has jurisdiction and the offender fails to complete treatment. Completion of treatment is not required for the Records and Driver Control Bureau of the Department of Justice (Driver Control) to issue a probationary license or to restore privileges at the end of the six-month suspension. Driver Control will restore the first time offender's license at the end of six-months even if the offender fails to complete court ordered treatment.

Treatment is mandatory for second or subsequent DUI or Per Se offenders. If the offender fails to complete treatment, including monthly monitoring, the judge may move to hold the defendant in contempt or revoke a suspended sentence if the court still has jurisdiction over the offender. Completion of treatment is mandatory for Driver Control to issue a probationary license or restore privileges at the end of the one-year revocation.

Failure to Comply with Treatment/Aftercare

If the offender refuses or fails to follow the treatment or aftercare recommendations, then the treatment provider or aftercare provider shall notify the court. This can be accomplished in the same manner as the notice given to the court for failure to enroll or to comply, as discussed previously. If the Court Order/Referral form is used, then the treatment provider or aftercare service will check the appropriate box in Part E and F of the goldenrod form. Two copies are to be made. One copy is to be sent to the offender and one copy is sent to the referring court. The treatment provider or aftercare service will retain the goldenrod copy pending the court's determination of non-compliance.

The court may follow the procedure described under failure to enroll in or failure to attend the Assessment, Course and Treatment (ACT) program. A hearing must be held before any action is taken. The remedies of contempt, revocation of a suspended sentence and revocation of the court's recommendation for a restricted probationary driver's license may be imposed upon an offender who fails to follow treatment recommendations.

It has been reported that some judges do not impose sanctions for offenders who fail or refuse to follow treatment or aftercare recommendations after they have been notified of the offender's non compliance.

Provisions for Persons Under 21 Years of Age

A person 18 years of age who is convicted of possession or consumption of an intoxicating substance third offense shall be ordered to complete an alcohol information course approved by the Department of Public Health and Human Services (DPHHS) and in the discretion of the court may be ordered to complete drug and alcohol treatment upon recommendation of a licensed addiction counselor. The court in addition to the above provisions shall order the minor and the parent or parents or guardians to complete and pay all costs of participation in a community-based substance abuse information course that meets the statutory requirements if one is available.

A person 18 years of age or older who is convicted of possession of an intoxicating substance:

1. First offense - the offender shall also be ordered to complete a DPHHS alcohol I information course.
2. Second offense - the offender shall also be ordered to complete a DPHHS alcohol information course and, in the court's discretion, may be ordered to complete drug and alcohol treatment upon the recommendation of a licensed addiction counselor.
3. Third offense - the offender shall be ordered to complete a DPHHS alcohol information course and, in the court's discretion, may be ordered to complete drug and alcohol treatment upon the recommendation of a licensed addiction counselor.

It is reported that some judges conduct their own diversion programs for offenders under the age of 18 and do not require compliance with statutory provisions requiring participation of the minor and the parents or guardians of the minor in substance abuse information courses.

Recommendations

- ◆ Encourage judges to impose sanctions, including but not limited to contempt or activation of suspended sentences, on all offenders who fail or refuse to follow treatment or aftercare recommendations.
- ◆ Utilize private or quasi-public probation services to order and monitor misdemeanor offenders' compliance with Assessment Course and Treatment (ACT) program requirements.
- ◆ Prohibit judges from waiving compliance, by minors and their parents or guardians, with statutorily mandated participation in substance abuse education programs, in cases where the offender is under age 18 has been convicted of possession or consumption of an intoxicating substance.
- ◆ Prohibit judges from implementing diversion programs that waive compliance with completion of education or treatment requirements in cases where the defendant has pled guilty or no contest to the offenses of under or over age 18 possession or consumption of an intoxicating substance.
- ◆ Encourage judges to order minors convicted of possession or consumption of an intoxicating substance to complete drug and alcohol treatment upon the recommendation of a licensed addiction counselor.

4-A-2: Medical or Health Care Settings

Advisory

Any adult or adolescent seen by a medical or health care professional should be screened to determine whether they may have an alcohol or drug abuse problem. If the person may have a problem with alcohol abuse or dependence, a brief intervention should be conducted and, if appropriate, they should be referred for assessment and further treatment. The screening and brief intervention should be:

- *Conducted by trained professionals in hospitals, emergency departments, ambulatory care facilities, physician's offices, health clinics, employee assistance programs and other medical and health care settings.*
- *Used to decide whether an assessment and further treatment is warranted.*
- *Based on standardized screening tools (e.g., CAGE, AUDIT or the AUDIT-C) and brief intervention strategies.*

Status

Brief intervention and screening programs are being implemented at two levels. First, four Level II trauma center hospitals are utilizing a brief intervention strategy with patients in the Emergency Departments (ED) or Trauma Wards. Patients meet with trauma, ED or pharmacy staff who discuss medical and injury risks associated with alcohol. Patients are encouraged to recognize risks of DUI and are encouraged to moderate their alcohol consumption. While patients are provided information about chemical dependency treatment sources, there is no formal screening or referral procedure. The hospital-based program has monitored emergency treatment recidivism but has not evaluated the impact of the program on patients' alcohol abuse or impaired driving.

In Gallatin County, brief intervention has been expanded to a community setting. Gallatin Responsive Interventions Partnership (GRIP) was formed to increase community leadership around alcohol as a health issue, provide information for community action, improve treatment quality and end discrimination against people seeking treatment. GRIP has trained individuals in a variety of professions in providing brief interventions.

GRIP was formed with a grant from Join Together (JTO) Demand Treatment program, a national initiative to increase the number of people who get quality treatment for alcohol and other drug problems. The first step to increasing treatment is to get consumers, family members, and key leaders to take steps to drive up demand.

Recommendations

- ◆ Implement a screening and referral procedure in the hospital-based brief intervention program.
- ◆ Evaluate the hospital-based brief intervention program for impact on alcohol abuse and impaired driving.

4-B: Treatment and Rehabilitation

Advisory

States and localities should work with health care professionals, public health departments, and third party payers, to establish and maintain programs to treat alcohol and other drug dependent persons referred through the criminal justice system, medical or health care professionals, and other entities. These programs should:

- *Match treatment and rehabilitation to the diagnosis for each person based on a standardized assessment tool, such as the American Society on Addiction Medicine (ASAM) patient placement criteria.*
- *Provide treatment and rehabilitation services designed specifically for youth.*
- *Provide treatment and rehabilitation services for non-English speaking offenders and culturally relevant treatment for special populations (e.g., Native Americans or newly arrived immigrant groups).*
- *Facilitate health insurance parity treatment for alcohol and other drug abuse disorders, to permit access for persons regardless of ability to pay and encourage States to pursue legislative changes to support health insurance parity payment for alcohol and other drug abuse disorders, particularly in rural and underserved areas.*
- *Ensure that offenders determined to have an alcohol or other drug dependence or abuse problem begin appropriate treatment immediately after conviction, based on an assessment. Educational programs alone are inadequate and ineffective for these offenders.*
- *Provide treatment and rehabilitation services in addition to, and not as a substitute for, license restrictions and other sanctions.*
- *Require that drivers who either refused or failed a BAC test, and/or whose driver's license was revoked or suspended, complete recommended treatment, and that a qualified professional has determined that their alcohol or drug use problem is under control before their license is reinstated.*

Status

Montana requires all drivers convicted of DUI, Misdemeanor Dangerous Drugs (MDD), Underage Drinking and Driving (UDD), and third or subsequent Minor in Possession (MIP) to complete a screening for alcohol and other drug dependence. The assessment process is the first of three components of the Assessment, Course, and Treatment (ACT) program. The Montana Department of Health and Human Services, Division of Addictive and Mental Disorders (DAMD) licenses agencies providing assessment services. Assessments include a minimum of three approved evaluation instruments, a minimum of two assessment interviews, and collateral information, such as history of substance abuse related problems. Offenders are classified as misuser/no pattern, abuser, chemically dependent, or unidentified. Second and subsequent DUI offenders are automatically referred to treatment with assessment results used to determine appropriate level of treatment. First offenders classified as chemically dependent are likewise referred to appropriate treatment.

The assessment process has not been evaluated or revised in many years. New DUI screening instruments have been developed in other states and many states prescribe a standardized screening instrument.

Results of the assessment are recorded on a standard form and forwarded to the court as well as to the treatment provider and the offender.

Offenders have the option of a second opinion. If this option is elected, the court considers the results of both assessments with the judge making the final decision regarding accepting one of the assessments. There is no limit on the time allowed to receive a second opinion. This creates a potential loophole by which an offender can delay treatment.

Offenders pay all costs of assessment.

Once referred, the offender becomes the responsibility of the treatment agency. The treatment agency informs the court when treatment is completed or when the offender fails to participate. The court informs the Records and Driver Control Bureau of the Department of Justice of the disposition.

A portion (6.6 percent) of the state excise tax on alcoholic beverages is used to support treatment services. There are outpatient treatment resources available in most of the State; however, residential treatment is not available in many parts of the State.

No single agency has responsibility for tracking and monitoring the progress of offenders through the ACT process. Unless an offender's treatment provider actively monitors each client, it is possible for an offender to slip through the cracks of the system.

Warm Springs Addiction Treatment and Change Program (WATCh) is a modified therapeutic community for DUI offenders in a secure facility. The program is an alternative to the normal prison sentence. WATCh is a partnership between Community, Counseling and Correctional Services, Inc. (CCCS, Inc.) and the Montana Department of Correction (MDOC). These two facilities have a capacity of 140 individuals. Since its inception in 2002 the program has served over 840 offenders. Program statistics demonstrate a 90 percent completion rate and extremely low recidivism rate of approximately six percent.

Though alcohol use and abuse is epidemic among Native Americans on the reservations, several factors complicate referrals to and outcomes of treatment. DUI offenders on the reservations are part of very small communities and often cannot escape the community of peers that is pivotal in the lifestyle that promotes excessive alcohol use. Social norms often coerce individuals to adhere to the status quo rather than breaking with the group and creating an autonomous lifestyle. Moreover, on-reservation drinking may center around homes and places that are frequented by many tribal members, making it hard to avoid the places where alcohol is consumed.

Tribal representatives agreed that there are not enough resources to meet the need for treatment, prevention and mitigation of health costs caused by alcohol abuse. The Blackfoot reservation is

the only reservation in Montana that has a state approved residential treatment center. That center was recently certified to provide ACT training. It is committed to serving all American Indians in Montana and has culturally specific programs, as well as a treatment program specifically for American Indian women. However, the facility at present can only accommodate 20 clients. The Indian health service funds it through a P.L. 638 program assumed by the Tribe.

Two tribes are in the process of getting certification to operate the ACT program. State and tribal representatives testified that it is very important to provide a culturally relevant curriculum for American Indians in the ACT program. Currently, urban American Indians may be referred to an ACT program if they have been adjudicated by a State court. Tribal courts have not made similar referrals, possibly in large part due to the lack of resources and capacity on the reservation.

Individual American Indians have also been referred to the WATCH program. These individuals are within the state correctional system as a result of felony DUI. No such facility exists on reservations.

An innovative structure has been developed on the Flathead reservation to deal with treatment needs on that reservation. School officials worked to overcome the longstanding divisions between the tribe and the city government by creating a 501-C-3 corporation jointly owned by the tribe and the city. The corporation now attracts grants to do treatment work for all residents on the reservation.

A pervasive problem is coordinating access to programs that will be available to American Indians both on and off the reservation. This is a transient population, and there are significant obstacles to disbursement of resources based on Indian Health Service policies, state health program requirements, Medicaid requirements and policies applicable to substance abuse and mental health needs. There needs be coordinated policy among tribal, state and federal healthcare agencies and facilities.

Recommendations

- ◆ Evaluate the current ACT screening procedure and instruments and revise or replace as indicated.
- ◆ Evaluate the overall effectiveness of ACT on impaired driving and alcohol abuse among offenders.
- ◆ Develop screening, referral and treatment procedures for Native Americans that address cultural differences and access to services.

4-C: Monitoring Impaired Drivers

Advisory

Monitoring functions should be housed in the driver licensing, judicial, corrections, and treatment systems. Monitoring systems should be able to determine the status of all offenders in meeting their sentencing requirements for sanctions and/or rehabilitation. Monitoring systems must be able to alert courts to non-compliance. Controlled input and access to an impaired driver tracking system, with appropriate security protections, is essential. Monitoring requirements should be established by law to assure compliance with sanctions by offenders and responsiveness of the judicial system. Non-compliant offenders should be dealt with swiftly either judicially or administratively. Many localities are successfully utilizing DWI courts or drug courts to monitor DWI offenders. States should:

- *Have an effective monitoring system for all impaired driving offenders (including out-of-state offenders).*
- *Use effective technology (e.g., ignition interlock mechanisms, electronic confinement, and monitoring) and its capability to produce reports on compliance.*
- *Include driver license tracking systems as an essential component of monitoring.*
- *Generate periodic reports on offender compliance with administrative or judicially imposed sanctions.*

Status

Driver information is maintained by the Records and Driver Control Bureau of the Motor Vehicle Division (MVD) of the Montana Department of Justice. The 2004 Montana Traffic Records Assessment disclosed a number of problems relating to record keeping and transmission. These problems included: convictions being withheld and not forwarded for recording, unreadable input from some courts, the decision not to acquire and record the adverse histories of out of state drivers, the inability to receive electronic data from some courts, backlogs of convictions to be posted, and diversion of convictions for minors. Offenses that are prosecuted pursuant to municipal ordinances may not be properly recorded as convictions if they have not been correlated to standard citation references.

The deficiencies noted in the 2004 Traffic Records Assessment are being addressed. It was estimated, however, that a modern client-based data system will not be fully implemented until 2008.

There is no statewide citation tracking system containing information about enforcement and adjudication of all citations by all enforcement agencies. This lack of information prevents the State from evaluating and determining the effectiveness of enforcement countermeasures. Montana does not have a centralized case management system connecting the various courts. Each court has its own procedures for following cases from the point of filing through prosecution to disposition.

Montana's limited jurisdiction courts do not have state supported probation systems to monitor DUI defendants. There is no requirement in Montana law that first, second or third time DUI offenders be monitored on probation. As a result, in many courts there is no supervision of convicted offenders to insure that they comply with court imposed mandates. Courts are constrained to resort to use of contempt to enforce orders relating to abstinence, treatment, and compliance with ignition interlock usage. The use of contempt powers requires that a court be first made aware of non-compliance by some source and then, that it initiate its own enforcement proceedings. A probation authority would assume these duties and relieve the court of cumbersome supervisory duties. Private probation services have been utilized successfully in states that do not provide state supported probation services to their limited jurisdiction courts. Many of these private entities, such as the Salvation Army Correctional Services, provide efficient and effective service without cost to the courts that they serve. Statutory authority would probably be required to permit operation of such private probation entities in Montana.

The establishment of a Uniform Traffic Citation system would function as a foundation for an effective DUI offender monitoring system in Montana. Through the use of uniform traffic citations all traffic violations issued throughout the State could be tracked from arrest through conviction, dismissal, or other disposition. Through use of uniform citations, law enforcement and prosecutors would be required to use uniform codes to designate the type of offense with which the defendant was initially charged. All citations would be accounted for and all dispositions would be available for record keeping purposes. Ultimate dispositions would be reflected for purposes of license action and to insure that offenders who were ordered to complete treatment or ignition interlock usage had completed such requirements prior to application for probationary or permanent license reinstatement.

All drivers convicted of DUI must participate in the Assessment, Course and Treatment (ACT) program. There is no single agency responsible for tracking and monitoring drivers through the system. Service providers at each level are responsible for monitoring while the driver is under their purview. However, this was not seen as a problem and it appears that assessment agencies and treatment agencies inform the courts and driver-licensing agency of drivers' compliance or failure in the program.

Recommendations

- ◆ Develop an Impaired Driver Tracking System including data on all DUI offenders' actions in the criminal justice, driver licensing and treatment systems.

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TEAM CREDENTIALS

SUSAN (SUE) BRYANT

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- Susan (Sue) Bryant is the (retired) Director of the Public Transportation Division of the Texas Department of Transportation. The Public Transportation Division has 180 employees and manages federal and state grant programs to rural and small urban transportation systems, the State's medical transportation program, and public transportation planning.
- During her career with TxDOT, she has held the position of State Traffic Safety Director, Assistant to the Deputy Director for Field Operations, and Highway Safety Planner and Program Manager. She has served as Secretary and Member of the Board of the National Association of Governors' Highway Safety Representatives and Member of the Law Enforcement Committee of the Transportation Research Board.
- She has taught high school and adults, consulted for the media in major markets, and teaches management to state and local officials. She has been named to "Who's Who of American Women," has received the National Award for Public Service from the U.S. DOT, and is a two-time recipient of the AASHTO President's Modal Award for highway safety.
- A Phi Beta Kappa graduate in English from the University of Iowa, she holds a Master's Degree in Communications from Iowa and a Master's Degree in Business Administration from the University of Texas at Austin.

RICHARD J. GLYNN

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- Recent consulting work includes conduct of twelve Traffic Records Assessments for individual Indian tribes; a nationwide Traffic Records Assessment for Indian Country; tribal detention facility program and design reviews for five construction projects funded by the U.S. Department of Justice; and, a student records analysis and management study for Marquette University in Milwaukee, Wisconsin.
- From 1971 to 1997 worked in the U.S. Department of Justice and the U.S Department of Interior. Held positions as Staff Director of the Offshore Minerals Management Program, Deputy Director of the President's Outer Continental Shelf Task Force, and Assistant to the Director of the Minerals Management Service. Also served as Senior Analyst in the Office of the Secretary of Interior for Bureau of Indian Affairs programs. At the U.S. Department of Justice, worked with state and local criminal justice agencies on the application of planning methodology in crime reduction and system operations.
- BA in Political Science, MS and PhD in Urban and Regional Planning.

JUDGE KARL B. GRUBE

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- Judge Grube has served as a State Trial Court Judge in the County Court for Pinellas County, Florida since his election to that office in 1976. In 2000 he was elected to a seventh consecutive term in office. He received his Bachelor of Science degree in Business Administration from Elmhurst College, in Illinois, his Juris Doctor degree from Stetson University in Florida and in 1992 was awarded a Masters Degree in Judicial Studies from the University of Nevada.
- Prior to assuming the bench, he served as an assistant public defender followed by private practice, which included being city attorney for Redington Beach, Florida. Judge Grube has served as president of the Florida Conference of County Court Judges and as assistant dean of the Florida New Judges College. He was also elected chairperson of the American Bar Association's National Conference of Special Court Judges and has been active in the ABA's Judicial Division, including occupying an elected seat on the ABA's Judicial Council.
- Judge Grube is a member of the academic faculty of the National Judicial College and the University of Phoenix. He also lectures at the Stetson University College of Law in St. Petersburg, Florida. He has published legal articles through the American Bar Association, the National Judicial College, The Florida Bar Journal, The State Court Journal, Stetson College of Law's Law Review and the Journal of Law and Technology. Additionally, he has produced and presented continuing judicial education and training programs for the states of Florida, Georgia, Michigan, New Mexico, North Dakota, Rhode Island, Texas, Tennessee and Washington.
- In 1998, he was awarded a two-year Judicial Fellowship by the U.S. Department of Transportation's National Highway Traffic Safety Administration (NHTSA). In that capacity he worked closely with administration and staff at NHTSA including designing and editing a judicial newsletter concerning matters related to criminal law and traffic safety. As a judicial fellow, Judge Grube also designed in-house training programs for NHTSA staff and administration. Judge Grube has created and presented programs for the U.S. Department of the Interior and the U.S. Department of Justice. In 2004 he celebrated his 23rd year as a member of the faculty of the National Judicial College where he has annually taught courses including: Constitutional Criminal Procedure, Search and Seizure, Sentencing, The Role of the Judge, Ethical Judicial Community Outreach and the Admissibility of Evidence from Defendants and other Sources.
- In 2002 Judge Grube received certificates of appreciation from the Governors of North Carolina and Nevada for services rendered to those States. The Governor of Nevada additionally proclaimed a "Day In Celebration" of Judge Grube for his efforts in the field of

judicial education and training through the National Judicial College. He as also received commendations from the Supreme Courts of Florida and Nevada for his accomplishments in the field of judicial education. Other awards include nomination by the President of the United States to the Board of the State Justice Institute, receipt of the Harvey Ford judicial excellence award, and the V. Robert Payant excellence in teaching award and the American Bar Association's Franklin Flaschner judicial award.

- A frequent presenter at state judicial organizations and bar association education conferences, Judge Grube is well known for his civil law update programs and the effective use of Powerpoint and other technologically current presentation techniques. His mock trial programs have been utilized both at the College and nationally to provide judges with hands on training in resolving current legal and evidentiary issues which confront them in criminal trial proceedings.
- Judge Grube resides in Treasure Island, Florida together with his wife Julia.

ROBERT P. LILLIS

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- Rob Lillis is President of Evalumetrics Research, providing research and evaluation technical assistance to substance abuse, criminal justice, traffic safety, health and mental health programs at the state and local level. He serves as Research Consultant to the Partnership for Ontario County, Finger Lakes Drug Court, Ontario County Juvenile Drug Court, Wayne County Rural Middle School Consortium, Allegany Council on Alcoholism and Substance Abuse, and a number of other local youth development and substance abuse prevention programs. In the past three years he has conducted surveys of over 17,000 middle and high school students in the Finger Lakes area to assess their risk and protective factors related to substance abuse, violence, teen pregnancy and school dropout.
- Mr. Lillis served as Project Director on the State Incentive Cooperative Agreement (SICA) Outcome Study in which he completed an evaluation of school-based mentoring programs in schools in Ontario County, New York. Results of the study were presented at the National Prevention Network (NPN) annual prevention research conference in 2003.
- From 1991 through 2001 he was a faculty member and Director of the Research Accident Investigation Team in the Department of Community and Preventive Medicine, University of Rochester School of Medicine. From 2000 to 2001 he was Director of Research for the Department of Emergency Medicine. While at the University he served as Principal Investigator for numerous traffic injury research projects including: The Detection of Drugs in Injured Drivers Project and The Identification, Enforcement and Referral Project for Injured Impaired Drivers. He also served as a co-investigator on the Drinking Driver Treatment Outcome Study in San Juan County, New Mexico.
- From 1988 through 1991 Mr. Lillis served as Manager of Highway Safety Programs in the Injury Control Program, Division of Epidemiology, New York State Department of Health. He was responsible for the development and evaluation of state and local highway injury prevention initiatives. He was responsible for obtaining, linking and analyzing medical record, crash and driver history data at the State and local level.
- From 1978 to 1988 Mr. Lillis served as Project Director on numerous research projects at the New York State Division of Alcoholism and Alcohol Abuse. These included the Youth Alcohol Study, Special Highway Safety Policy Analysis Project, and the Problem Drinker Driver Needs Assessment. He also served as Research Consultant to Governor Carey's Task Force on Impaired Driving and provided ongoing research and technical assistance to the Governor's Office and the legislature during legislative consideration of increasing the

State's legal drinking age. He was responsible for extensive analyses of motor vehicle crash data and driver records.

- He has served as a Special Consultant to the U.S. General Accounting Office and conducted a review and synthesis of research related to the effectiveness of drinking age laws in the United States as well as reviews of research related to seatbelt laws and motorcycle helmet laws.
- Since 1991 Mr. Lillis has served as a member of the Impaired Driver Assessment consultant team for the National Highway Traffic Safety Administration (NHTSA). He has conducted reviews of impaired driving prevention and treatment activities in Maryland, California, Arizona, Texas, Connecticut, West Virginia, Wisconsin(2), Oregon, New Mexico, North Carolina, Minnesota, Tennessee, Missouri, Delaware, North Dakota, Montana, Utah, Ohio, South Carolina, Rhode Island, Puerto Rico Washington State, and Arizona.

ASSISTANT CHIEF GREG MANUEL

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- Assistant Chief Manuel is a 30 year veteran of law enforcement, having served the last 26 years with the California Highway Patrol. Prior to relocating to California, he was a trooper with the Ohio State Highway Patrol. He has a unique background of serving in a field and administrative assignment at every rank he has held.
- Some of his more notable assignments include:
 - Assistant Commander of Information Management Division;
 - Commander of two field offices;
 - Captain in the Office of the Commissioner; and
 - Commander of the Office of Public Affairs
- Additionally, he worked in the Office of Employee Relations, Vehicle Theft and served as the Legislative Liaison for the California Governor's Office of Traffic Safety for two years.
- While assigned to the Office of Traffic Safety, Assistant Chief Manuel conducted the first in the nation Ignition Interlock Pilot Program for multiple DUI offenders, and publicized the first laboratory certification of these devices.
- Assistant Chief Manuel is a graduate of the Federal Bureau of Investigation's National Academy. He is the President of the Sacramento Chapter of the National Organization of Black Law Enforcement Executives, commonly known as NOBLE, a Member of the Board for the Greater Sacramento Urban League and Friends Outside Incorporated, and a member of the California Peace Officers Association.
- He attended the University of California at Davis and is currently on the California Highway Patrol promotional list for Chief.

REBECCA TSOSIE

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- Rebecca Tsosie is Professor of Law at Arizona State University, where she also serves as Executive Director of ASU's Indian Legal program. She serves as a Supreme Court Justice for Fort McDowell Yavapai Nation. She was appointed as the Lincoln Professor of Native American Law and Ethics in 2001. She joined the faculty of ASU College of Law in 1993, after practicing with the law firm of Brown & Bain.
- Professor Tsosie graduated from UCLA School of Law in 1990 and she clerked for then Vice-Chief Justice Stanley G. Feldman before joining Brown & Bain.
- Professor Tsosie teaches in the areas of Indian law, Property, Bioethics and Critical Race Theory and she is the author of several articles dealing with cultural resources, environmental policy and cultural pluralism. She is the co-author of a federal Indian law casebook entitled: *American Indian Law: Native Nations and the Federal System*. She is the recipient of the American Bar Association's "2002 Spirit of Excellence Award."
- Professor Tsosie is of Yaqui descent.

Montana Impaired Driving Assessment
May 22 – 27, 2005
Wingate Inn
2007 North Oakes
Helena, MT

Sunday May 22, 2005

Noon – 3:00 P.M. – Lunch Provided

- A. Introductions and Overview of the Process
- B. MDT Director Jim Lynch, Governor's Rep.
- C. Highway Safety Reports: Overview of Problem ID & Demographics
Jack Williams, Research and Evaluation Specialist, State Highway Traffic Safety Office
- D. Overview of Highway Safety Program
Priscilla Sinclair, State Highway Traffic Safety Officer
- E. Trainings, Special Projects and Legislation
Audrey Allums, State Highway Traffic Safety Office
- F. Standard Field Sobriety Test Training and Strategic Traffic Enforcement Program
Al Goke, State Highway Traffic Safety Office
- G. Tribal Government and Reservation Overview
Cordell Ringel, Montana/Wyoming Tribal Leaders Council

2:45-3:00 p.m. Break

3:00 – 5:00 P.M. Banik Communications: Overview of the State Highway Traffic Safety Office Impaired Driving Media Program

Ronda Banik, Sr. Vice-President;
Karen Venetz, Montana Media; and
Randi Szabo, Vice-President of Communications

Monday May 23, 2005

8:00 – 9:15 A.M. SAFE KIDS/SAFE COMMUNITIES State & Local Coalitions

Mike Cooney, Healthy Mothers Healthy Babies Executive Director – Helena;
Lonie Hutchinson, SKSC – Missoula;
Wendy Olson, SKSC, – Kalispell;
Maggie Virag, SKSC – Helena

9:15 – 9:45 A.M. Questions

9:45 – 10:00 A.M. Break

10:00 – 11:30 A.M. DUI Task Force Coordinators

Lonie Hutchinson – Missoula;
Elaine Boyd – FT Peck Reservation;
Al Recke – Great Falls;

Wendy Olson – Kalispell;

Lt. David Jeseritz – Helena

11:30 A.M. – Noon Questions from Panel

Noon - 12:30 P.M. Lunch

12:30 - 1:45 P.M. Safe and Drug Free Schools/Driver's Ed

Cathy Kendall, Office of Public Instruction – Helena;

Stormy Knight – Great Falls;

Kevin Barsotti, Rocky Boy Reservation – Box Elder;

David Huff, Driver's Education Director – Office of Public Instruction – Helena

1:45 – 2:00 P.M. Questions from Panel

2:00 – 2:30 P.M. Social Marketing

Dr. Jeff Linkenbach, Director, Most of Us - Bozeman

2:30 – 2:50 P.M. Questions from Panel

2:50 – 3:00 P.M. Break

3:00 – 4:15 P.M. Native American Media Project

Randi Szabo, Vice-President of Communications, Banik Communications and Interns:

Sharon Wagner, IHS – Browning;

Ron Jackson;

Dean Snow; and

Lonnie Weeks

4:15 – 4:45 P.M. Questions from Panel

4:45 – 5:15 P.M. MADD – Bill Muhs

5:15 – 5:30 P.M. Questions from Panel

Tuesday May 24, 2005

8:00 – 8:30 A.M. Employer Programs

Eric David - Town Pump - Helena

8:30 – 9:00 A.M. Questions from Panel

9:00 – 9:30 A.M. Liquor Control and MT. Tavern Assoc.

Jason Wood – Dept. of Revenue;

Diana Koon – Mt. Tavern Association

9:30 – 9:45 A.M. Questions from Panel

9:45 – 10:00 A.M. Break

10:00 – 11:00 A.M. Enforcing Underage Drinking Laws

Patti Jacques – Montana Board of Crime Control;

Steve Pre'tat, Police Department – Great Falls;

Cory Reeves, Police Department – Great Falls;

Lisa Posada-Griffin – Billings Police Department

11:00 – 11:30 A.M. Questions from Panel

11:30 – 12:15 Prosecution and Questions
Marty Lambert, Gallatin County Attorney, President of the Montana County Attorney’s Association - Bozeman

12:15- 12:45 P.M. Lunch

12:45 - 2:00 P.M. Law Enforcement Programs
Sgt. Henry Devereaux – Highway Patrol – Great Falls;
Bill Snell-BIA/Crow Law Enforcement Services;
Lt. David Petersen – Gallatin County
Chief of Police Frank Garner – Kalispell;
Director of Public Safety Lewis Peterson – FT Peck Reservation

2:00 - 2:30 P.M. Questions from Panel

2:30 – 3:30 P.M. Judges
Jim Oppedahl –Court Administrator;
Judge Greg Mohr – Sydney;
Judge Gary Acevedo-Salish & Kootenai
Judge Bradley Johnson - Whitefish

3:30 – 4:00 P.M. Questions from Panel and Break

4:00 – 4:30 P.M. Driver’s Licensing
Greg Noose, Records and Driver Control Bureau Chief – Dept. Of Justice

4:30-5:00 P.M. Questions from from Panel

Wednesday May 25, 2005

8:00 – 8:30 A.M. Brief Screenings and Intervention
Thom Danenhowe – EMS Dept. of Health;
Jenna Caplete, Brief Screenings & Intervention Programs – Bozeman

8:30 – 8:45 A.M. Questions from Panel

8:45 – 9:15 A.M. State Alcohol Prevention and Intervention Programs
Jackie Jandt, Planning & Outcome Officer, Addictive & Mental Disorders Division - Helena

9:15 – 9:45 A.M. Questions from Panel

9:45 – 10:00 A.M. Break

10:00 – 11:00 A.M. Assessment Course Treatment (ACT), Treatment and Diagnosis
Dan Haffey, Butte Silver Bow Chemical Dependency Services – Butte;
Shelly Johnson, Alcohol & Drug Services of Gallatin County – Bozeman;
Peg Shea, EMCMHC Substance Abuse/Dependency Services – Missoula,
Pat Calf Looking, Director Blackfeet Chemical Dependency Program - Browning

11:00 – 11:30 A.M. Questions from Panel

11:30 A.M. – Noon Felony DUI - WATCh Program

Cathy Okeson – Dept. of Corrections

Noon – 12:15 P.M. Cordell Ringel, Montana/Wyoming Tribal Leaders Council - Wrap Up

12:15 - 1:00 P.M. State Highway Traffic Safety Office - Wrap Up

Lunch

Friday, May 27, 2005

11:00 AM. - 1:00 P.M Assessment Team Report Out